G. R. S. 58]

Previous references.

C.S. 19-4-6.
-286-11-4.
-286-11-7

Later references.

C.S. 735-15
& 325-15 (1-22)

1912/13
(Courts)

File No. 287-12

Serial Nos. 1—17

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1—17

Part B for May 16.

SUBJECT.

Appeal against the order of acquittal passed by the Addl. Asst. Sessions Judge in the cases against G. Narayana Sastri, late Central Wazir, Bangalore.

17) To the Registrar, Chief Court
J. 44407 12/5/16

states that in the circumstances mentioned, Govt are pleased to accept the proposal of the Chief Court in the matter.

W D 1351—GPB—20,000—13-12-15

Secy. 8/6/16

G.R.S. 11]

1912-13

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 287 of 1912-13

FILE HEADING.

Appeal against the orders of acquittal passed by the City Magte, Bangalore, in the cases against G. Narayana Sastri, late Central Mazir, Bangalore

From

The Public Prosecutor, Bangalore Dist

No. Dated 24.4.1913 Received 25.4.1913

Diary No.	Enclos.	Spare Copies.	Serial No.
J3048	1		1

BRIEF ABSTRACT OF LETTER.

Forwards a letter addressed to him by the Dist Judge of Bangalore asking the Public Prosecutor to move the Govt Advocate to order an appeal being preferred against the judgments of the City Magte.

NOTES AND ORDERS.

Pages V to V — Subs with Copies of judgments in the two cases

KG-129 — Which are placed in the linked file.

Dept in this receipt judgment copies subs to 15 Cr vide J3024: 04/13 — 28/4/1913 — 29/4/13

Usually, in cases of acquittal, the Dist. Magistrate consults the Govt Advocate and with

NOTES—First Shee

. R. S. 12]

General and Revenue Secretariat. | 65 File No. 287 of 1912-13

Serial No.

his opinion move the Govt to order an appeal being preferred. In the two case, under consideration the Dist. Magte has not addressed the Govt and even the Public Prosecutor has not stated the grounds of appeal.

3) In these circumstances may the opinion of the Govt. Advocate be called for unofficially?

4) Subd for orders.

Kg. 129 8/5/13 SN 9/5/13

Date of Judgment 18.3.1913

5 I think this may be done now. The Public Prosecutor has not sent even the records of the case to Govt. The Govt advocate will have to call for them himself, or he may ask the Dt Magte to send up the records.

Dr. Secy) SN 9/5

The District Magistrate must have voice in a matter of this kind and G.O. dd 22/5/05 requires that District Magistrate should consult the Govt. Adv. before moving Govt. in the matter of filing appeals against acquittals.

Vide flag Y Cf 286-12

7 The Public Prosecutor & the District Judge do not appear to have adopted correct procedure in the case. The former may be asked to approach the

NOTE—Contn. sheet.

GPE—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat.

Cls File No. 287 of 1912-D

Serial No.

District Mag writes as a special case, Govt Advocate may be unofficially consulted by Govt direct.

(1st Counsellor)

Draft Ltr 12/5

(2) This is a peculiar case. The Control of the Department is in the Bh. Court but as the appeal is to be before them, the present reference has not gone to them. The D. M. has little to do with the matter.

(3) The Govt Adv may be consulted.

13/5/13

14/5 Draft 14/5

(4) Forwarded to the Govt Advocate unofficially for favour of opinion in the matter

By order
S. Rajagopal
for Secy to Govt
14/5

W.O. No. 944
15.5.13

Cr. Case No 802 of 4.12.

(5) The accused, who was for several years Central Reader was tried by the

W.O. No. 547 dt 13.

NOTE—Contn sheet.

GPE—65,000—17-6-12.

R. S. 12]

General and Revenue Secretariat.

65 File No. 287 of 1912-13

Serial No.

City magte of Bangalore for three items of Cr: Breach of Trust stated to have been committed by him in the following manner

(1) That he drew pay at 7Rs a month in the name of one Srinivasalu for 5 months (July to Nov. 1910) & misappropriated the amount. As a matter of fact the said Srinivasalu was out of employ during these months.

§ 409 I.P.C.

(2) That in the months of April & May 1911, one Rama is shown as having acted for Narasimmaiah, & the accused drew pay (Rs 14 at Rs 7/a month) in the name of the said Rama & misappropriated the sum; the entry in the varaband ~~to the effect~~ that the pay was duly disbursed to Rama being false.

§ 409 I.P.C.

(3) That when he handed over charge in July 1911, he failed to deliver to his successor a sum of Rs 24. which was retained & misappropriated by him.

§ 409 I.P.C.

In the first two instances the charges framed against the accd under sec 409 I.P.C. seem to my mind to be erroneous. Criminal

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

Serial No.

breach of trust in this Court there was an original trust actual or Constructive (2) a dishonest misappropriation of trust property: or a dishonest disposal of it in violation of any direction of law or Contract Express or implied. A Criminal Case of misappropriation is necessarily involved in the offence of of Criminal breach of trust; And Criminal mis-appropriation takes place when the possession has been innocently come by, but where by a subsequent change of intention or from knowledge of some new fact with which the party was not previously acquainted the retaining becomes wrongful & fraudulent - I.L.R 15 Cal 388 - I. 400. The Case for the prosecution is that the accused misrepresented that Srinivasa Rau & Rama were in service & drew their pay ~~by~~ by means of fraudulent or dishonest inducement - If the prosecutor has not entrusted the accused with the property in question then it is more a case of cheating rather than one of Criminal breach

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

of trust. The 3rd count is alright.
Now coming to the merits of the case the question for consideration is whether the magte was right on the materials placed before him ~~often~~ in acquitting the accused. The judgt is not a very lucid one and the whole of the facts appearing in the evidence have not been well marshalled & clearly set forth. It is therefore not easy to state whether the magte has formed a correct estimate of the entire evidence in the case

1st Count:

13) The evidence of Srinivasa Rao that during the 5 months in question he did not work & did not receive any pay is rejected by the magte in which he is unworthy of credit. One noticeable feature that strikes me as somewhat improbable is that he left the office on being told by the accused that his acting period terminated & did not ever think of applying to the Sub-Judge during all the 5 months he was out of employ to be taken in. If he did not expect a vacancy

NOTE—Contn. sheet.

GPB—50.000—18-5-08

Serial No.

to occur & to be provided for soon what was his object in keeping a rented house in Bangalore during the whole of this period. On the other hand it is equally significant that during the 5 months in question Srinivasa Rao, a process server, was not entrusted with any process for service (vide C. Rosler) - Only one of two alternatives is possible under such circumstances (1) either that Srinivasa Rao was not in service or (2) that he was told off to do some duty other than process serving. In my opinion the absence of Srinivasa Rao's signature in the baraward for July does not prove anything useful. He himself does not say he was on duty in July, nor does he say that he was paid his salary for that month - Either he was on duty in July or he was not. If he was, & the accd did not pay his salary he would have reported the matter to the Subject If he was not the accused would have forged his signature as he is stated to have done in the other 4 months. Unless the baraward

NOTE—Contn. sheet.

GPB—50000—13-5-08

Serial No.

& the pay bills are before me I cannot form any safe opinion about the genuineness of what purport to be Srinivasa Rao's signatures or of the Entries relating to the disbursement of pay to him

2nd Count -

The absence of any written order appointing Rama Cannot be accepted as affording conclusive proof that Rama was not appointed, inasmuch as it is clear from Mr Nagappa's evidence that there have been admittedly appointments made for which no written order was either made or is now forthcoming. According to Mr Nagappa the Entries in the Paraward & pay bill have been forged by the accused after obtaining the Judge's signature to them. If so it can easily be found by scrutinising the Entries relating to the Celal account required for payment which according to the Codal rules ~~should~~ shall have to be entered in words The Paraward & Pay Bills

GPB—50,000—18-5-08

Serial No.

are therefore very essential

3rd Count :-

1) After a careful consideration of the facts relating to the 3rd Count & the evidence bearing thereon I am inclined to agree with the City Magte that the evidence is insufficient to bring home the charge to the accused

2) Cr. Case no 102 of 12-13

On the facts urged by the Pros. the charges have been correctly framed.

3) The accused in this case admits that he received back the three items of unexpended bhatta, but adds that he later on paid the same to the witnesses concerned, & on token of such payment obtained the signatures of the witnesses to the Summonses. Unfortunately all the 3 items of misappropriation relate to a period more than 12 years back & consequently valuable evidence which would establish the guilt or innocence of the accused is not forth-coming. The witnesses concerned are not available for

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

Examination & the original summonses have been destroyed. The C. Roster which was is of great help & seems to indicate that there was no unexpended batta on hand. I understand that there are some corrections - I really find it difficult to form any safe opinion by a perusal of the judgment alone. The evidence & the exhibits must be directed to have to be carefully looked into. The entire records in the two cases may be sent for.

Bombay Govt.

31-5-13.

G. R. S. 12]

General and Revenue Secretariat. | 65 File No. 287 of 1912-13

Serial No.

Appeal time expires on 18th Sept 1913.

(15) Subd with the opinion of the Govt Advocate Paras 11 to 17.
Kg.-129 SW
4/6/13 (16) The Govt Advocate wants the entire records of the two cases to arrive at a satisfactory conclusion. The records may accordingly be called for
(Sd) 20) yes Sdn 5/6
5/6.
21) Draft acdy
Sdn 5/6

22) (Cb) Subd with a draft to the Dist. Mgte., Banga
Kg.-129 SW
6/6/13 23) Issue (Earth)
Sdn 6/6

Sdn 11/6
Time extension granted on 17-6-13

2 To The District Magistrate
Bangalore Dist.
No 3750 Dy 7. 6. 1913
Calls for the entire records in the above cases.

3 From the Dist. Mgte., Bangalore Dist
No S712 Dy 21st June 1913
Forwards the records in the two cases.

P.T.O

NOTE—Contn. sheet.

GPB—35,000—17-6-12.

3687.

(12

G. R. S. 12]

General and Revenue Secretariat. | 65 File No. 287 of 1912-13

Serial No.

24) Subd with the records.

Kg. - 129 W/m/6
23/6/1913

25) Forwarded to the Govt Advocate unofficially for favour of further remarks if any. The records of the two cases are obtained & put up herewith

By order
S Rajagopal
for Secy to Govt
24/6

G.O. no 951
25.6.13.

G.O. No 3.
III
17/7/13

26) The exhibits filed in the two cases (Eg. Barwards, portfolio of Rotis &c) are not among the records. However on a careful consideration of the depositions & the cumulative effect of the evidence adduced at the trial I am inclined to the opinion that there are not sufficient grounds for an appeal against an acquittal in either of the said cases & that an appeal, if filed, is not

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

3691. (13

G. R. S. 12]

General and Revenue Secretariat. | of File No. 287 of 1912-13

Serial No.

likely to be successful.

Sd Ramaswamy Ayr.

15-7-13. Forward.

27) Submitted with ref to para 9.

Kg.-129

17-7-13

28) The opinion of the Govt Advocate may, perhaps, be accepted

Sd 12/7

Dr Secy)

Bears the matter probable success in the event of appeals being preferred, the character of the charges concerned has to be considered.

1st Convocation)

D. M. Manager Law 18/7 Sd

32) Get the full records (including all exhibits please)

21/7/13

31) I have perused these proceedings. Please get original exhibits.

31/7/13

32) Draft calling for them

(To be treated as urgent henceforth)

Sd 1/8

Draft 11/8

NOTE—Contn. sheet.

Appeal time expires 8-9-13

GPB—35,000—17-6-12.

113

[R. S. 12]

457

General and Revenue Secretariat.

C/5 File No. 287 of 1912-13

Serial No.	
	The w/c records remain in the branch
	35 Draft calling for all the exhibits in the two cases is subd. Kg.-129 SW 2/8/13
	34 Issue SBR 2/8
4	To The District Magistrate, Bangalore Dist. No J/366 dt 4.8.13 Calls for all the exhibits in original in the two ct cases against the late Cenchal razir of Bangalore Distt.
5	From the City Magistrate of Bangalore No 778 dt 5.8.13 Will refer to the above forwards all the exhibits in the two cases. Subd Will refer to para 31. Kg.-129 7.8.13. SW 8/8/13
	Appeal time expires on 18.9.13.
	The exhibits in 2 bundles will be subd now if req'd or to the 1st or direct Submit them to Cr SBR
	1st Cr) SBR 8/8 It is a pity that some more Conclusive cases could not be picked up for the prosecution of this official. I have examined

NOTE—Contn. sheet.

General and Revenue Secretariat.

File No. 1 of 1912-13

Serial No.

the case independently and cannot say that there is a fair chance of success in an appeal. I think that the case may be dropped.

36) The audit of the accounts referring to this case has, I believe been finished. If there are any more patent cases available, the man may deserve to be prosecuted again. If it has been received, please examine it & let me know. Otherwise a report may be called for.

5/8/13

Draft sent 6/9

37) draft sent

6/9

Flag X in cl 286-12 linked hereto

38) From the last letter of the Chief Controller on the subject it will be seen that the Audit has not yet submitted his report thereon. No such report has yet been received in this office.

8.8.13

N.T.O.

NOTE—Contn. sheet.

Serial No.

2 marked Cont[d] subject to approval hrs 20/9

(39) Draft calling for a report from the Chief Court in the matter is sub[d] for approval or other orders.

(40) Another draft returning the original exhibits in the two cases to the City Magistrate of Bangalore from whom they were recd is also sub[d].

KG.-129
8/9/13 MM.

hrs 20/9

(41) Serial No 1 requires an order that no appeal need be pfd. Please put up such a draft also which is the essential draft now reqd

SDK 8/9

(42) A third draft as directed above is also sub[d].

KG.-129 MM.
10/9/13

Dr Secy) SDK 11/9

(43) Approved Dr 11/9

(44) Issue SDK 11/9

6. To The Public Prosecutor, Bangalore Division
No J 968 Dr 17.9.13
In the matter of an appeal against the order

NOTE—Contn. sheet.

Serial No.	
	of acquittal by the City Magistrate in each of the cases nos 802 of 1911-12 & 102 of 1912-13 on his file, directs that the matter may be dropped.
7	To the Regr Chief Court. No J 966 Dt 17.9.13 Enquires whether the Special auditor has subd his report on the audit of the late Central Nazar Bangalore and requests to forward the same with a report showing clear cases of Embezzlement if any for which the official deserves prosecution.
8.	To the City Magistrate Bangalore. No J 970 Dt 18.9.13 Returns the entire records together with all the Exhibits - in cr cases nos 802 of 1911-12 & 102 of 12-13.
9	From the Regr Chief Court No 1446 Dt 24.9.13 stating that the Special auditor T14 will be asked to audit the accts of the late central Nazarat Bangalore, as soon as he finishes the auditing of the accts of the Court of 2nd Munsiff of Mysore.
45)	Subd for information. The report of the audit may be awaited.
	ms 3/10/13.
	46) 4/10

NOTE—Contn. sheet.

G. R. S. 12]

General and Revenue Secretariat. | File No. 287 of 1912-13

Serial No. 16

From the Registrar, Chief Court
No 3467/231 Dy 8.2.1915

States that the Auditor of Civil Courts has checked accounts only upto July 1899 & that he has yet to check the accts of 12 years, that he has not sub⁵ his report so far as he has examined the accts & that he has been directed to submit his progress report at once.

47) Sub⁵ for signature & order.
Reg. 116
13/2/1915

15/2/15

Asst-Member)

48) The Chief Court may be asked to expedite the passing of final orders in the matter, ~~as it is desirable that~~ & communicate the result.

17/2/15

Put up draft

49) Draft sub⁵.
Reg. 116
19/2/1915

50) Issues
19/2

15/2

25/2

NOTE—Contn. sheet.

GPB—25,000—2-12-14

2820
2703

(19

. R. S. 12]

General and Revenue Secretariat.

C/o File No. 287 of 1912-13

Serial No.	
11	To the Registrar, Chief Court, no 285 2 dy 23.2.15 Requests that the passing of final orders may be expedited and the result communicated to Govt.
12.	From the Registrar Chief Court. no 3680/249 dy 18th (20) Feb 1915. States that the auditor of Civil Courts has promised an early report on the audit of the accounts of the late Central Nazarath and that on receipt of it the whole matter will be dealt with.
	(51) Subt for perusal. The further report may be awaited. KB 44. 27.2.15 MM (52) 27.2.15
13	From the Same Offcr no 394/268 dy 26.2.1915 States with reference to 11 that the Auditor's report is promised next week and that the Chief Court will deal with it as quickly as it can. (53) Subt for information. Further report may be awaited. KB. 5.3.15 MM (54)
14	From the Same Offcr no 285/216 dy 10/15.12.1915 Forwards the report of audit on the

Sen 27/2

6/3

NOTE—Contn. sheet.

GPB—25,000—2-11-14

Serial No.

accounts of the late Central Nazarethi for a period of 1 year and 5 months, state that the Judge do not think it desirable to call upon the Nazir to make good any sum of money but that the Nazir has failed to meet the greater part of the case made out against him by the Auditor and has obviously failed seriously in his duty of keeping accounts and adds that, if Govt agree, Narayana Sastri will be appointed as a Clerk on the pay he was drawing but that the period of suspension should stand as he has not cleared his reputation.

55) The points for consideration and orders are:-

1. Whether there are any more patent cases available for which Narasu Sastry may be prosecuted again - vide page 15, para 36 of this note.

2. Whether Narasu Sastry deserves to be reappointed if so, if it may be on the pay that he was drawing before his suspension - vide last para of Rajahar's letter.

*viz, Rs 50 + Rs 5 per allee

3. Whether he may be called upon to make good the sum of money for which he may be held responsible - vide para 22 of Rajahar's letter.

56) Out of nearly 14 years during which the Central Nazarethi was in existence, the accounts for a period of 1 year 5 months

P.T.O.

NOTE—Contn. sheet.

GPB—25,000—2-11-14

Serial No.

only have been audited. The Audit considers that Narayana Sastry is responsible for Rs 453-11-0 for the period of audit. The Chief Court is of opinion

para 22 of paper under disposal

that it is not desirable to call upon the Central Nazir to make good the sum or any Surety money.

57) As regards the first point, it is a matter for orders if the defects mentioned in paragraph 4 of the Registrar's letter cannot maintain a prosecution against the individual. The Chief Court is positive

para 16 of — do —

that the false entries (defect no 2) shows have been made by the Nazir himself and

18 of do —

that the Nazir is responsible for the amount misappropriated by forgery of process peons' names (defect no 3)

58) Considering the above remarks of the Chief Court and those made in paragraph 23 of the Registrar's letter* that the Nazir has failed to meet the greater part of the case made out against him and has failed seriously in the discharge of his duty, it is a matter for orders whether his case merits reinstatement on his original pay. The Chief Court apparently considers that suspension from April 1912 to date of reinstatement

* Rs 557

R. T. O.

NOTE—Contn. sheet.

GPB—20,000—30-6-15

G. R. S. 12]

General and Revenue Secretariat. | CS File No. 287 of 1912-13

Serial No.

is enough punishment in the case. The report made by the Dist. Judge in April 1912 refers to a few specific irregularities relating to the months of April, May & June 1911 and the Govt's surmise that there may have been no defalcations after 1905 may not therefore be quite warranted.

Subd for orders.

Jay W
Encl 565
21-11-15

vide para 24 of paper under disposal

Hg.
17.12.15 RK

59) As the result of an enquiry held by the District Judge in regard to certain allegations of misappropriation against G Narayana Sastry, late Central Nazir Bangalore, the Nazir—he was placed under suspension from 1.10.1911. At the instance of the District Judge, complaints were lodged against Narayana Sastry in two of which he was acquitted and in the 3rd discharged. After the final disposal of the cases, he applied for reinstatement, but final orders were postponed pending the result of the audit of the entire accounts of the late Central Nazarath.

60) The accounts from 2.2.1898 to 30.6.1899 only have been audited and

GPB—20,000—30-6-15

General and Revenue Secretariat.

C5 File No. 257 of 1912./3

Serial No.

the chief cont. have submitted a detailed report.

6) The auditor was directed to examine the accounts from Febr 1898 to 1911 but he considers that the examination of the accounts subsequent to 1905 was unnecessary as Narayanasastri has completely accounted for the whole of the permanent advance entrusted to him. Thus whatever charges of misappropriation is alleged against Narayanasastri it must be in the period prior to 1905. Even as regards this period, the auditor thinks that no useful reliable audit can be made from 12-12-1900 to 1905 inasmuch as 1) the Nazir maintained no cash book Subsequent to 12.12.1900, 2) the entries in the abstract registers are only for lump sums without any details, 3) the entries in the Rolls are all incomplete and unreliable, and the records relating to them are all destroyed.

(2) Thus the only period for which the auditor has examined the accounts is from 2-2-1898 to 30-6-1899. In the first few months of this period one Krishnasastri was the Nazir, and practically it is only for one year during the period that Narayanasastri was the Nazir

NOTE—Contn. sheet.

GPB—20,000—30-6-15

G. R. S. 12]

General and Revenue Secretariat.

File No. 287 of 1913-14

Serial No.

(4) The defects noted by the Auditor are:-

1. The non return of unexpended amounts of witness batta to the Courts,
2. False entries in the cash book maintained by the Nazir;
3. Forgery of P'wans peon's name and
4. Alterations in the C.Roll entries

He thinks that Narayana Sastry is responsible for Rs 245-3-11.

(4a) In regard to the 1st point, the Judges consider that the batta might have been returned as explained by the Nazir, and that in the absence of records it may not be safe to assume that there was any dishonesty. As regards the 2d point, they hold that the explanation of the Nazir has not been satisfactory. As for the 3d & 4th points, they find that there is no evidence that the entries are forgeries, but that he is responsible for the sums involved in the entries.

(5) As the sums involved are small sums due to parties but not to Govt, and as the irregularities relate to the years 1898, 1899, the Judges recommend that the many

NOTE—Contn. sheet.

GPB—70,000—17-12-15

G. R. S. 12]

General and Revenue Secretariat. | 25 File No. 267 of 1912-13

Serial No.

med not be recovered, and that the Nazir may be reinstated on his former pay but entitled any pay for the period during which he was under suspension.

68) As regards the audit, the following points require to be noted. The audit was entirely based on a comparison of the authorised account books with the cash book which was not prescribed by the Government or the Chief Court. The words connected with the cases are all destroyed, and thus through means by which the audit could be verified are wanting completely in the case. That the entries in many of the cases in the Court Registers can not be completely relied upon is clear from the auditor's note of 20.2.1900, a copy of an extract from which is filed in this case. It seems also not safe to condemn a man upon such insufficient basis

especially considering that the accounts concern a number of petty transactions and relate to a period as old as 1898.

67) Under these circumstances the recommendation of the Chief Court seems to be a very fair one and

NOTE—Contn. sheet.

GPB—70,000—17-12-15

1676

(26)

G. R. S. 12]

General and Revenue Secretariat. | C/o File No. 287 of 1912.

Serial No.

if approved, draft approving this Samenama be submitted.

SB
4/8/16

First Member)

68) After reading the report, I am led to think that the recommendation of the Chief Court ~~is~~ ~~hardly supported by~~ ~~that~~ is very lenient to the Official Concerned. Is the Service register here — showing the Nazar's antecedents, present pay &c? If not, get it.

6/3/16

Draft
8/3.

C/o 8/3

69) Draft rec.
Reg.
8/3/16 WL

SWA

70) Issue
8/3

NOTE—Contn. sheet.

GPB—70,000—17-12-15

25-7

(27)

G. R. S. 12]

General and Revenue Secretariat.

Ch File No. 287 of 1912.

Serial No.	
15	To The Registrar Chital court No 3652 9-3-1916 Request that the service register of the Official may be forwarded.
16	From the same office No 4425/332 dt 16-3-1916 Forwards the service register. 71) Subt with refce to paragraph 68. He was drawing a pay of Rs 50 + Rs 5/- pers. allowance as Head Clerk, District Court. [In the service register the figure 5 has been struck out and his pay is shown to be Rs 50-2-60 under the revision scheme]. Reg. 18/8/16 Dt 20/3 First Member) 72) Before this Case, Narayana Sastri seems to have borne a good character. Perhaps on that account and on account of the long period of suspens.

NOTE—Contn. sheet.

GPB—70,000—17-12-15

2517

G. R. S. 12]

General and Revenue Secretariat.

C/o File No. 287 of 1912-13

Serial No.

undergone, he may be released on an appⁿ of about 40Rs, acc^g to recommendation of the Bh. Court.

73) The matter may be disposed of if the Dewan considers it necessary at a meeting.

27/3/16 Dewan)

29/3/16

74) Please bring up at an early meeting of Council. I see no objection to the Joint Members' recommendation.

5.4.16 hb

C.S. on leave 7/4

15.4.16

1579
30.3.16

NOTE—Contn. sheet.

GPB—70,000—17-12-15

2917

(35)

(29

Subject.-

Re-instatement of Narayana Sastry late Central Nazir of Bangalore, on an appointment of about Rs.40.

OPINION OF THE COUNCIL.

75) The proposal of the Chief Court may be accepted.

26/4

26/4

Draft G.O. herewith

26/4

76)

77) Draft G.O. herewith.

8.5.16)

78) For approval

79) Second Member)

Approved.

Has the draft G.O. been sent up to the Secretary? If so, please do accept.

10/5/16

451

9-5-1916

B

23/5

80) It is not necessary to send this up to the Secretary

Secretary

81)

Secretary

16/5

G. R. S. 12]

General and Revenue Secretariat.

File No. 287 of 1912.

Serial No. 17

To The Registrar

Chief Court.

No. 4444 12th May. 16

States that, in the circumstances mentioned, Govt are pleased to accept the proposal of the Chief Court.

NOTE—Contn. sheet.

GPB—20,000—30-6-15.

III/25th Ch

KG 25/4

D 3048

12/2-1913

SECTION 65

FILE 287 of 1912-13

1

Bangalore
24th April 1913

From

The Public Prosecutor
Bangalore

To

The Secretary to the
Government of Mysore
General & Revenue
Departments
Bangalore.

Sir,

In continuation of my letter dated 21st idem reporting the result of the cases instituted against G. Narayana Shastry, I have the honour to forward herewith the letter of the District

Judge, Bangalore, in original
for your information.

I have the honour
to be, Sir,
your most Obedient
Servant
Thangamma

Public Prosecutor

Rec'd 10 APR 48/-1-47

1912-13

1

From J. Paramasiva Iyer Esquire, B.A
District Judge, Bangalore Division.

To S. Ranganna, Esquire, B.A.B.L
Public Prosecutor, Bangalore

Dated 21st
Despatched 22nd April 1913.
Received

General No. 2744
No. 558

Enclosure No.

His No: Nil dated 10/4/13 forwardin
Copy of judgments passed by the City
Magistrate Bangalore, in Criminal Cas
Nos 802 of 11-12 and 102 of 1912-13
instituted against the late Central Nazir
G. Narayanasastry, of the Bangalore
Division with the remarks that the
judgments are not sound, that the
Conclusions drawn by the Magistrate
are not supported by the facts of the cas
and that there are salient points for
prosecuting the cases further.

With Reference to the

above has the honor to state that under the circumstances stated

therein, the Public Prosecutor will be so good as to move the

Government to appeal against the judgments of the City

Magistrate.

Yours faithfully

[illegible]

District Judges

Bangalore

G.R.S. 26]

65 File No. 287(

Serial No. 2

*Diary No. of letter replied to*_____

Govt

No. J 3750

General and Revenue Secretariat

( )

, *the* 19 .

To

The District Magistrate

Bangalore Dist.

ssue 7-6-13

Signed by m SP Rajagopalachar

Sir,

I am directed to request you to obtain and forward to this office at a very early date the entire records in Criminal Case nos 802 of 1911-12 & 102 of 1912-13 on the file of the City Magistrate of Bangalore — Govt Vs Narayana Sastry

I have the Spl To Govt

Mg.-129 Encls 6/6/13

SN 6/6

SUBJECT.

III 21/6

1912-13.

From

The District Magistrate
Bangalore District

To

The Secretary to the
Govt of Mysore,
Genl & Revl Depts

Dated

Despatched

Received 21-6-1913. Bangalore.

General No. S 712

No.

Enclosure No. Two files of Records in a separate bundle

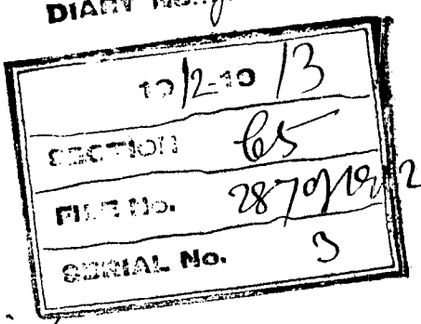
Forwards entire Records in Crl Case (Govt vs Narayana Sastri).

Recd & [illegible]

GPB—75 reams—25-5-10

Office of the Deputy Commissioner
and District Magistrate,
Bangalore District,
Dated Bangalore, 21 June 1913.

DIARY No. J. 3687.



From,

K. Chandy Esq.r, B.A.,
District Magistrate,
Bangalore District.

To,

K. R. Sreenivasa Iyengar Esq.r, M.A.,
Secretary to the Government
of H.H. the Maharaja of Mysore,
General and Revenue Department.

Sir,

With reference to your letter No. J. 3750/Cr. 287-12-2 dated the 7th June 1913, I have the honour to forward herewith entire records in Criminal Cases Nos. 802 of 1911-12 and 102 of 1912-13 on the file of the City Magistrate, Bangalore (Government Vs Narayanasastri) as called for in your letter.

I have the honour to be
Sir,
Your most obedient Servant,

K. Chandy
District Magistrate.

G. R. S. 26]

Recvd C/S File No. 287 of 1912-13
Serial No. 4

Diary No. of letter replied to—— ——

No. 7366.
Dt 4/8/13

General and Revenue Secretariat
( )
, *the* 191 .

To

The District Magistrate
Bangalore Dist.

Date of issue 4/8/13

Signed by Mr. S.P. Rajagopalachar

Sir,

Adverting to your letter No. S 712, dt the 21st June 1913, forwarding the records in Crl cases Nos 802 of 1911-12 & 102 of 1912-13 on the file of the City Mgte of Bangalore (Gattu Narayana Sastri), I am directed to ~~state~~ request you to send ~~at once~~ all the exhibits in original in the two cases referred to above. The matter may kindly be treated as immediate. I have &c

for Secy

SUBJECT.

SN

DIARY No. J 457.

1913-1914
CS
287/9/12-13
5

III
7/8 Exs.

19

From The City Magistrate
Bangalore

To The Secretary,
to the Government of Mysore,
G and R Deptts.
Bangalore

Dated 5th August 13.

Despatched
Received 5/8/13.

General No. 77-
No.

Enclosure No. Exhibits sent separately

Sir,

With reference to your No J 366
Cts 287
-12-4

dated 4th August 13 to the address of the District Magistrate Bangalore, I have the honor to submit herewith all the Exhibits filed in Crl.Case No 802 of 11/12 and 102 of 12/13 on the file of this Court with Venkata Rao Deputy Munshi and Court Clerks.

I have the honor to be,
Sir,
Your most obedient servant,

City Magistrate

GPB—150.000—10-6-11

G.R.S. 13.

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record]

Please acknowledge the records & exhibits mentioned in the accompanying lists and send the lists back to this office by the peon.

HS
18/9/13

The lists are herewith returned duly acknowledged by the Record Keeper V. & P. Mills
9.19-9-13

N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Exhibits in 102-912-13

Serial No	Description	Remarks
1	Old Miscellaneous Reg. Reg A. ✓	✓
2	466 to 933 - Reg A ✓	✓
3	Cash Register ✓	✓
4	Register B. ✓	✓
5	Reg No 12. ✓	✓
6	Vol II Reg B. ✓	✓
7	B Register ✓	✓
8	Witness Register ✓	✓
9	C Roster ✓	✓
10	Cash Register ✓	✓
11	D Register ✓	✓
12	O.S. No 592 ✓	✓
13	Do 743 ✓	✓
14	A. circular ✓	✓
15		
16	7/8/13	
17	The above Exhibits together	
18	with the Entire records connected with the above case are returned	
19		
20		MS 18/9/13
21		
22	Received records as per list	
23	19/9/13.	

Exhibits in E.C.C No 802 of 11-12

Serial No	Description	Remarks.
1	10 pay Bills.	
2	Ex P43 in C.C. No 802 of 11-12	
3	Margin Report	Pages 1 to 4
4	Nominal Roll.	
5	Deposition of Srinivas Rao	2 papers
6	Ex D11 in C C No 802	Do
7	Service Reg.	
8	one patti.	
9	Papers marked Ex P23 P24 to P25	
10	Proceedings of the Chief Conservator of Forests	
11	Statement of Naraganasabi Report	8 papers
12	Issue Furniture, Books Etc.	6 papers
13	Schedule of Establishment of the Chief Conservator.	
14	Govt Vs Venkata Rao - Chief Conservator Reports.	
15	File of orders.	
16	Rarahard.	
17	Small Rarahard.	

18 Registry Permanent advances.
19 VII B Register.
20 Curators Register.
21 6 & 9 & 10-11 Wi Civil Comrcy Sub-Judge.
22 Fo. Reg.
23 Pay Bill Reg.
24 Permanent advances Reg
25 " do
26 "A." Register.
27 Customs Navigs Book.
28 C Roster.
29 C Roster.
30 En D 18 Stamp Register
31 En P 45. Ledger Register (Pages from 16 to 187)
32 En P. 46. Ledger Register (Pages from 165 to 200).
33
34 7/8/18
35
36

The above Exhibits together with the entries connected with the case are returned

WGS
18/9/13

Received back as per Statement
19/9/13

Three d/s

G. R. S. 26]

d/s File No. 287 of 1912-13
Serial No. 6

Diary No. of letter replied to—

Stating that no appeal need be filed in the Bangalore Central Nazir's Case No. J-968

General and Revenue Secretariat
( )
, the 191 .

To
The Public Prosecutor
Bangalore Div.

Date of issue 17.9.13

Signed by Mr S Nagappala
Chan

Paper under disposal

Sir,

Adverting to your letter dt. the 24th April 1913 in the matter of an appeal being preferred against the order of acquittal passed by the City Magistrate in each of the cases Nos. 802 of 1911-12 & 102 of 1912-13 on his file, I am directed to state that in the opinion of Govt,

P.T. over.

SUBJECT.

the matter maybe dropped.

I have to

SPL — Dunn

For secy Govt. 11/9

NEL

List of enclosures

Copied by MJB

Examined by MJB 18/9

GPB—25,000—8-8-11.

G. R. S. 26]

CS File No.287 of 1912-13
Serial No. 1

Diary No. of letter replied to

Re Late Central Nazir's Case No. T 966

General and Revenue Secretariat

( )

, the 191 .

To

The Registrar,

Chief Court

Date of issue 19.9.13

Signed by M.S.P. Rajagopala Chari

Sir,

Adverting to your letter no. 581/35, of the 5th Aug 1913, in the matter of the amounts said to have been embezzled by G. Narayana Sastry, late Central Nazir of the Bangalore Dist., I am directed to enquire if the Special Auditor has submitted his report on the audit of the late Central Nazarat, Bangalore

P.T. over.

Hajib the linked file (CS 286-12)

SUBJECT.

necessary so, to request you to forward a
copy thereof.
certified to this office along with
a report showing clear cut case
of embezzlement, if any, for which
the principal may be prosecuted
and deserves prosecution.

Yours
Thanking you 11/9

Yours obedt

Leg.-129
8/9/13

List of enclosures,

Copied by 11/9

Examined by

GPB—25,000—8-8-11.

Threads

Returning the records

G. R. S. 26]

File No. 2879
1912-13
Serial No. 8

Diary No. of letter replied to———

No. T 970

General and Revenue Secretariat
( )
, the 191 .

To
The City Magistrate
Bangalore

Date of issue 18.9.13

Signed by M S P Rajagopala
Chair

Has the honor to return herewith the entire records in cr. Case No. 802 of 1911-12 & 102 of 1912-13 on his file recd recd with letter no. 712 dd 21.6.13 from the D.t. Mgte., Bangalore, along with all the exhibits filed therein as per list attached and to request that the receipt thereof may be duly acknowledged on the list which may be returned to

P.T.O. over.

SUBJECT.

this office with the bearer.

By order

for Secy to Govt Dtd 11/9

Memo.-129
8/9/13

Copy to the Dist. Magte., Bangalore,
for information.

By order

for Secy to Govt

List of enclosures,

Copied by

Examined by 15/9

GPB—25,000—8-8-11.

1913-1914
CHIEF COURT OF MYSORE,
Court
No. 287
No. 9/26-4;

No: 1446/114

Bangalore, dated 24th September 1913.

From,

The REGISTRAR of the
Chief Court of Mysore.

To,

The SECRETARY to the Govt: of Mysore,
General and Revenue Departments.

S i r,

In reply to your letter No. J. 966/Cts. 289-12-7 - dated 17th Instant, I am directed to state that the Auditor of Civil courts who was directed to take up the work of auditing the accounts of the late Central Nazarath, Bangalore, was prevented from doing so in April last as some of the account books which had been filed in the City Magistrate's Court of Bangalore, could not be had before the appeal time was over. In the meantime, his services having been urgently required by the 2nd Munsiff of Mysore for the purpose of ascertaining the exact amount defalcated by the Court Nazir of his court, he was directed to proceed forthwith to that place and to take up that work. As soon as he finishes that work, he will be

asked

asked to take up the work of ~~auditing~~ auditing the accounts of the late Central Nazarath, Bangalore, and to bring it to a completion at as early a date as practicable.

I have the honour to be,
Sir,
Your most obedient servant,

Registrar.

N. G.

IMMEDIATE.

3467/231

CHIEF COURT OF MYSORE,

Bangalore, dated 8th February 1915.

J 2563

From

N.T. GOPALIENGAR, Esquire, B.A., LL.B.,
Registrar of the Chief Court of Mysore.

14-15
C5
287-12
10

To

D.M. NARASINGA RAO, Esquire, B.A., B.L.,
Offg: Secretary to the Government of Mysore,
General and Revenue Departments.

S i r,

Adverting to your letters Nos. J. 2558/Cts. and 2599/Cts. dated 3rd and 5th Instant respectively calling for information in regard to the case of G.Narayana Sastry, late Central Nazir, I am directed to state that the Auditor of Civil Courts who was deputed to audit the accounts of the Central Nazarath commenced his work on the 2nd of February 1914 and has up to date checked the accounts from 2nd February 1898 to 30th June 1899 only. He has yet to check the accounts of 12 years from 1st July 1899 to 1st July 1911 when the Central Nazarath was abolished.

The Auditor has not submitted his report for the period he has examined the accounts. He has been directed to submit his progress report at once.

Re-admitted as Vakil by Mr. Krishna Murthy

After the late Central Nazir Narayana Sastry was acquitted or discharged by the City Magistrate, Bangalore, he applied to this court for reinstatement. I am to state that final orders thereon were postponed pending the result of the audit of the entire accounts of the late Central Nazarath.

I have the honour to be,

Sir,

Your most obedient servant,

R. Gopalan

REGISTRAR.

N.G.

G. R. S. 26] 282 ✓

File No. 287-12
Serial No. 11

Diary No. of letter replied to 2565

No. J 2852.

General and Revenue Secretariat
( )
, *the* 191 .

To
The Registrar, Civil Courts

Date of issue 23 · 2 · 1915.

Signed by M. G. Srinivasayya

Sir,

Adverting to correspondence ending with your letter no. 3467/231 dated the 8th Feb 1915 stating that the Auditor of Civil Courts has not submitted his report on the audit of the accounts of the late Central Nazarath and that final orders on the application of Narayana Sastry for reinstatement were postponed pending the receipt of it.

over.

SUBJECT.

the audit of entire accounts of the Nazarath, I am directed to request that the passing of final orders in the matter by the Chief Cent may be expedited and the Govt communicates to Govt.

I have &c

[illegible] 18/9/15

For Offg: Secy to Govt.

No. 116
19/2/1915

List of enclosures

Copied by

Examined by

GPB—25,000—4-3-13

III/HC/22
№ 3680/249

Chief Court of Mysore,

Bangalore, dated 18th February ...1915.

/20

CWS 287/12

From

N.T. Gopaliengar, Esq., B.A., LL.B.,

Registrar of the Chief Court of Mysore,

B A N G A L O R E .

DIARY No. J. 2703

1914-15
SECTION Courts
FILE . 287-12
ITEM No. 12

To

D.M. Narasinga Rao, Esq., B.A., B.L.,

Offg: Secretary to Government,

General and Revenue Departments.

S i r ,

In continuation of this office letter No. 3467/231 dated the 8th Instant re the case of G. Narayana Sastry, late Central Nazir Bangalore, I am directed to state that the Auditor of Civil Courts has promissed an early report on the audit of the accounts of the late Central Nazarat and on receipt of it the whole matter will be dealt with.

N. Gopaliengar

REGISTRAR.

M.S.L.

3921/268

2.3.15.

cls 3/13

CHIEF COURT OF MYSORE.

Bangalore, dated 26th February 1915.

J 282

1914-1915
SECTION cls
FILE No. 287 of 19
Vol. No. 13

From

N.T. GOPALIENGAR, Esquire, B.A., LL.B.,
Registrar of the Chief Court of Mysore.

To

D.M. NARASINGA RAO, Esquire, B.A., B.L.,
Offg: Secretary to the Government of Mysore,
General and Revenue Departments.

S i r,

Adverting to your letter No. J.2352/Cts. 287-12-11 dated the 23rd Instant, requesting that the passing of final orders in the matter of the reinstatement of G.Narayana Sastry may be expedited and the result communicated to Government, I am directed to state that the Auditor's report on the audit of the accounts of the late Central Nazarath is promised next week and that this court will deal with it as quickly as it ca

I have the honour to be,
Sir,
Your most obedient servant,

N. Gopalienga

H.G. REGISTRAR.

Urgent

No. 2855/216 En 7

III

15/12

CHIEF COURT OF MYSORE,

Dated, Bangalore, the 10th December 1915

15

DIARY No. J. 1676

15 16

B.A., LL.B.

28-7-12

14

From

N. T. GOPALIENGAR, Esquire, B.A., LL.B.,

Registrar of the Chief Court of Mysore.

To

D. M. NARASINGA RAO, Esquire, B.A., B.L.,

Secretary to the Government of Mysore,

General Department.

S i r,

7/g 1 in the Cricket File

Adverting to your letter No. J. 2599/Cts. dated the 5th February 1915, calling for a report of the final action taken by this Court in the case of Narayana Sastry, late Central Nazir of Bangalore, I am directed to state that soon after the abolition of the Central Nazarath system with effe from the 1st of July 1911, the Additional Munsiff of Bangalo to whose Court the accounts of the Central Nazarath were tra ferred, submitted a confidential report stating that from a inspection of the process registers he found the late Centra Nazir had grossly mismanaged the Department and committed other illegal acts. In continuation of that report the Additional Munsiff submitted two applications to this Court from two process peons claiming their pay for the months o March and April 1911 respectively and stated that there we entries in the baraward showing that their pay for those months had been disbursed, the signatures put opposite to their names seemed to him to be suspicious. The applica tions of the process peons were sent to the District Ju Bangalore for an enquiry and report. The report of

District Judge's enquiry was submitted to the Government wit this Court's letter No. 3928/284 dated the 6th April 1912 with a suggestion that the papers may be made over to the Government Advocate with a view to criminal proceedings being instituted against Narayana Sastry as the report disclosed a prima facie case against him. In the meantime the District Judge placed him under suspension with effect from 1st October 1911.

2. The Government in their order No. J. 3148-50/Cts. 266-11-2 dated the 27th April 1912, directed the Public Prosecutor of the Bangalore Division to go through the papers connected with the enquiry into the conduct of Narayana Sastry, file a complaint before the Magistrate having jurisdiction, and to conduct the case. The Public Prosecutor filed three complaints against him in the City Magistrate's Court, Bangalore. They were Criminal Cases Nos. 802*and 803*of 1911-12 and 102*of 1912-13 on the file of the said Court and Narayana Sastry was tried in those cases for offences falling under Sections 409 of the Indian Penal Code read with section 222 (2) of the Criminal Procedure Code, 477A, 403 or 40 Indian Penal Code, and 409, Indian Penal Code, respectively. He was acquitted by Mr. B. Venkoba Rao, the City Magistrate, in Criminal Case No. 802 of 1911-12 and was discharged under Sections 253 and 209, Criminal Procedure Code, in Criminal Case No. 803 of 1911-12 and was also acquitted in Criminal Case No. 102 of 1912-13. From the order of discharge passed in Criminal Case No. 803 of 1911-12 a Revision Petition (No. 92*of 1912-13) was preferred to this Court requesting that the said order be set aside and the accused be ordered to be committed to the Court of Sessions and it was rejected directing that the Public Prosecutor may, if so advised, put in his petition either to the District Magistrate or to the Sessions Judge. In the other two cases (Criminal Cases Nos. 102 and 802) the Public Prosecutor preferred Revision Pet

*Copies of judgments sent.

*Copy of the order sent.

* Copy of the order sent.

petitions (Criminal Revision Petitions* Nos. 93 and 96 and 94 and 95 of 1912-13) to this Court against the orders of the City Magistrate declining to frame a charge under Section 477A, Indian Penal Code, and admitting the accused to bail and they were also rejected as it was considered that the interference of this Court as a Court of Revision was unwarranted during the pendency of a trial in a Magistrate's Court. Thus concluded the criminal prosecutions against Narayana Sastry.

3. In letter No. J.3583/Cts. 286-12-2 dated the 21st May 1913, this Court was asked to furnish the Government with a statement of the ~~sai~~ amounts said to have been misappropriated by Narayana Sastry. The District Judge of Bangalore submitted the reports and statements of the Subordinate Judge and of the Additional (now Second) Munsiff of Bangalore shewing the amounts which they considered as having been embezzled by the late Central Nazir and this Court in forwarding them to the Government (letter No. 581/35 dated the 1st August 1913) considered that it would not be safe to act on those reports and that it would be more satisfactory if the matter was allowed to lie over till the Special Auditor of Civil Courts submitted his report on the audit of the accounts of the late Central Nazarath. The Auditor was directed to examine the accounts of the Central Nazarath from the date of its introduction to the date of its abolition (1898 to 1911). He was not able to commence the work as soon as he was ordered since some of the books of the Central Nazarath were filed in the City Magistrate's Court and since his services were urgently required at Mysore to audit the accounts of the Second Munsiff's Court there as there was a defalcation in that Court. The Auditor actually commenced his work at Bangalore on the 2nd of February 1914 and submitted on the 22nd of March last a report relating only to the period from 2nd February 1898 to the 30th of June 1899. As the completion of work seemed likely to be long delayed it was considered necessary to examine the work dealt with in the report and to decide whe

whether he should continue the audit to the end or not. The audit has been made very thoroughly so far as the records at the disposal of the Auditor allowed, but very slowly.

4. The defects noticed by the Auditor may be divided into four main classes, viz:-

Item No. 132 of the Auditor's Notes.

B. 1305 - O.S. 415 of 1897-98.

(1)

From Court ... 24-9-1898 ..3-4-0
To Hajikhan ... 29-9-1898 ..3-4-0

According to the C.Roster of Hajikhan the process was not served. This is one of the series of processes issued to Hajikhan on 29-9-1898 for which the amounts refunded have not been taken into the cash book (Vide notes under para 82). As no amount was returned to Court, the amount has also been taken in the balance statement.

Non-return of unexpended amounts of witness batta to the Courts concerned.

Item No. 113 of the Auditor's Notes.

B. 5342 - Ex: 1237 of 1898-99.

(2)

From Court ... 22-6-1899 ..0-4-0
To Venkataramanayya. 23-6-1899..5-4-0

The sum of As. 4/- paid to the process server on 23-6-1899 has been changed to Rs.5-4-0 by the insertion of the figure 5 in the Rupee column after the process server had signed the cash Book, and a sum of Rs. 5/- has been misappropriated. The cash book of 22-6-1899 has been initialled by the Nazir.

False entries in the cash book maintained by the Central Nazir.

Item No. 117 of the Auditor's Notes.

Ex: Mis. 988 of 1896-97.

(3)

A sum of Rs. 5/- is stated to have been paid to Venkatramayya on 1-6-1899 on account of Ex. Mis. 988 of 1896-97. There is no corresponding receipt from Court. Date of disposal of the application is not traceable. The signature in the cash book is a forgery of that of Venkatramayya by G.Narayana Sastry. There is no corresponding entry in his C.Roster. Thus a sum of Rs. 5/- has been misappropriated. The cash book of 1-6-1899 has been initialled by the Nazir.

Forgery of proces peons' names in cash book,

and

Item No. 137 of the Auditor's Notes.

B.1646 - Mis. 67 of 1897-98.

From Court ...	23-12-1898	..0- 4-0
To H.Narasinga Rao.	23-12-1898	..0-12-0
From -do-	18-1- 1898	..0-12-0
To Court ...	7-2-1899	..0-8- 0

(4)

The amount actually received from the Court as per Court Cash Book and the B.Register is As.12/- and not As.4/- as entered in the Nazir's cash book. The amount that ought to have been returned to Court is As.12/- and not As.8 In the C.Roster, in order to correspond to the amount returned to Court, the original entry of As.12/- has been changed to As.8/- and the words "12ವಲ್ಲ" have been added after "ಎಂಟ". Thus As/8 has been omitted to be credited in the cash book and As.4/- was ~~also~~ less remitted to Court.

Alterations in the C.Roster's entries

The items in the margin show an example of each kind of irregularity

5. Soon after the Auditor's report was received, Narayana Sastry was given an opportunity to look into it and to furnish his explanations on the several observations of the Auditor. The District Judge of Bangalore was instructed to allow him access to such of the records of cases and Court registers as he required to prepare his explanation.

6. The Auditor was permitted to criticize the explanation, and the Chief Judge subsequently took in person an explanation from Narayana Sastry on some of the points in question.

7. According to the Auditor the total amount for which Narayana Sastry is responsible for the period of his charge of the Central Nazarath, covered by the audit reports which are herewith forwarded (in original) for the information of the Government (as desired in your letter No. J.966/Cts.287-12-7, dated 17th September 1913) and kind return when done with, is Rs. 456-3-0. In his remarks on the Central Nazir's explanation the Auditor has stated that that sum of Rs.456-3- should be reduced by Rs. 2-8-0 as this sum was included in

1 year 5 months out of 14 years

T

his

his balance statement ~~by an~~ owing to ignorance of fact. Thus the balance for which Narayana Sastry is responsible according to the Auditor is Rs. 453-11-0. He has classified this amount as follows:-

		Rs.	As.	P
(1)	Omission to take credit in the cash book amounts received from process servers or Courts ...	81	11	0
(2)	Payments without corresponding receipts	53	6	0
(3)	Erroneous payments	6	0	0
(4)	Defalcations by interpolation or alteration of figures in the cash book	214	8	0
(5)	Defalcations by forging the signature of process servers ...	94	0	0
	Total irregular Etc: payments ...	449	9	0
(6)	Add - For net erroneous reduction of the cash balance made in working out the daily balances in the cash book ...	4	2	0
	T o t a l ...	453	11	0

8. The explanation offered by Narayana Sastry is in the main that the cash book maintained by him was not one of the books prescribed under the Central Nazarath Rules either by a Proceedings of the Government or of the Chief Court, that he continued the book maintained by his predecessor with the object of ~~red~~ readily noting the amounts received from each Court from day to day and its expenditure in the initial stages as the Central Nazarath system was a new one, that it seemed to him only as a sort of rough account book for refreshing his memory as to moneys received and spent and that the Audit should not have been based on # such a book. As the cash book was kept only for his information, no great care was ~~bee~~ bestowed to post it correctly and the irregularities and de-

defects noticed in that book by the Auditor ~~was~~ were due to his being new to the Nazarath system which had been newly introduced. That this explanation is worthless is clear from a perusal of the books, which though unauthorized, ~~was~~ were evidently regularly kept, and were put before the Munsiff from time to time for his initials.

9. It is impossible to believe that ~~tt~~ this Cash Book was merely a rough account maintained without regard to its accuracy.

10. He further points out that the available 'A' registers of the several Courts do not show any unspent balance against him as not returned to the Courts as it should have been shown if any amounts were really due in the cases picked up by the Auditor. He adds that up to date neither any local or outlying Courts or Court nor any parties or party to suits have or has claimed any amount as unspent and due from him and that even now if it should be discovered from the prescribed registers and original summonses, that he has to account for any public money, he is prepared to account for such items.

11. As regards the excess and erroneous payments noticed by the Auditor, Narayana Sastry states that they are due to the fact that owing to demands from Courts for unspent amounts he used to return them from the balance with him before ever the unspent amounts were returned to him by the process servers as they used to return to Headquarters rather late after all the papers entrusted to them were finished.

12. As for the alterations noticed by the Auditor in the C.Rosters of some of the process servers, Narayana Sastry explains that whenever witnesses, whose summonses were returned unserved, were brought to him or to the Court by the party, he used to get the summons duly served on them, pay the batta taking their acknowledgments on the back of the summons and that this necessitated alterations to be made in the rosters as to the mode of service. Another reason is that while checking the

roster entries which were used to be made by his subordinates, if anything was found incorrect he used to make the necessary corrections.

13. Now coming to the Auditor's reports and the Central Nazir's explanations thereon, I am to add that the Chief Judge examined the audit notes item by item with the Nazir's explanation and the Auditor's comments thereon. There are about 150 items in the period from 2nd February 1898 to 30th June 1899 and in only one item has the Nazir been able to give a satisfactory explanation. Of course, if he is allowed to say that the cash account is nothing, and that he kept it incorrectly, it may be that the foundation for most of the charges fails, but it cannot be admitted that it was merely a rough reference book: it was initialled by the Munsiffs from time to time and evidently though unauthorized it was the Central Nazir's own account.

14. The 'B' registers seem to have been written by process servers mainly.

15. In the absence of records it may not be safe to assume that the excess payments made were dishonestly made: some were clearly received by the Courts, and in some cases the excess was returned (in those cases there is nothing in the Nazir's accounts to show that the sum returned was brought into his balance), in others there is nothing to shew that it was returned. The Nazir might have made it good as he said in his personal explanation to the Chief Judge, but he probably did not.

16. As regards false entries going to reduce the Nazir's balance, no satisfactory explanation has been offered: the Nazir suggested at first that the figures were altered by his enemies after 1911, but as the Auditor points out, that explanation will stand only in one case: in the other cases the false entry must have been made before the daily total was made up and no one could have made it then except the Nazir himself. The Nazir has in his personal explanation admitted this and says he did not look at the cash book before he made his explanation

an extraordinary and not easily credible statement, seeing that the burden of his whole explanation is the injustice of basing the audit on his cash book. He has also stated that he can only explain these entries by supposing that he might have taken down wrong figures from process servers, an explanation which is obviously worthless.

17. The Nazir says he had to account for all the money he received and no one has complained. That is true but unless his balance was very carefully checked periodically he could easily avoid detection for some time. He dealt with several Courts and out of his general balance, could probably satisfy any particular demand for a particular sum, taking it from the amounts due to another Court. He would be able to utilize the balance in his hands at any rate temporarily for his own purposes and only a careful check of the cash book with the 'B' register or the Court's 'A' Register would have shewn the ~~same~~ difference. The Nazir may very likely have had good reason to believe that no such check was likely to be made, and that the cash balance as shown in his cash book would be generally accepted. He cannot have been merely amusing himself by making false entries in his cash account and does not say he was doing so.

18. As regards forgery of peons' names there is no evidence that the entries are forgeries but it is not important whether the Nazir forged their names or shared the loot with the peons, or merely got them to sign an incorrect entry. The point is that in the cases in which the Auditor finds forgery there is nothing to show that the sums there entered in reduction of the cash balance had to be paid to any one. The Central Nazir is clearly responsible. In his personal explanation he can only suggest that the process servers must have given him wrong figures. This is most unlikely in these cases, because at the dates to which the entries relate there was nothing to be done in the suits in which the payments are alleged to have been made

19. It will be seen that in the cases of Mofussil Courts some sums said to have been returned to the Courts are not supported by money order counterfoils or receipts and the Cou ledgers of those Courts do not show that they money was received by them. The necessary inference is that it was not sent. But the Court ledgers produced are of the Nelamangala Court and it is believed that about the time dealt with by the audit there was much irregularity in Nelamangala.

20. The accounts of the Central Nazarath have been very badly kept. As the Auditor shows, many of the alterations in the C.Rosters are extremely suspicious as intended to suggest that batta was expended which was really returned by the peons When the amounts are small, parties often do not take the troul to trace their funds through the Court and see that they get ba all unspent money, and this fact has to be reckoned with, as rendering the misappropriation of witness batta a particularly easy matter.

21. The Nazir truly says that no one has complained, and the money was not Government money but suitors' money. The irregularities relate to the years 1898 and 1899, and even the records of the suits have been destroyed in some cases. No claim is likely to be made against the Government at this date, and there is always a possibility that in a particular case there is some mistake, though the evidence of misappropriation is substantial.

22. The Judges do not therefore think it desirable that the Government should call upon the Nazir to make good any sum of money. The Government has really lost nothing except possibly by way of lapsed deposits.

23. But the Nazir has, in the opinion of the Judges, failed to meet the greater part of the case made against him the Auditor and has obviously failed seriously in his duty of keeping his accounts properly.

24. The Judges do not think that anything will be gained by pursuing the audit down to 1911 to the date of the abolition of the Central Nazarath system: it will take a long time and the Auditor thinks that after the introduction of the permanent advance system in the year 1905 it may probably be found that there were no defalcations: and before that after the Nazir gave up keeping the detailed cash book it may be difficult in the absence of records and registers ~~as~~ to arrive at satisfactory conclusions. Should the Government agree with this view, the Chief Court will appoint Narayana Sastry to be a Clerk on the pay he was drawing before his suspension commenced; he has not cleared his reputation and cannot be reinstated with back pay, but if the audit is not to be continued it must be assumed in the Nazir's favour that his later work shewed improvement and it may not be necessary to refuse him re-employment.

I have the honour to be,

Sir,

Your most obedient servant,

REGISTRAR.

N.G.

IN THE COURT OF THE CITY MAGISTRATE, BANGALORE.

Dated 18th March 1913.

P R E S E N T

B. Venkoba Rao, Esquire , B. A.

Criminal Case No. 102 of 1912 - 13.

Complainant.		Accused.
Government.	VS.	Narayana Sastry.

The prosecution examined :-

1. Seshagiri Rao.
2. Ramakrishnayya.
3. Mr. G. Sathyaji Rao.

Court witness (1) Nanjunda Mudaliar, and the following Exhibits were filed :- Exhibit P_1 is the Cash Register.

Do. P_{1A} and Exhibit P_{1B} are the entries in the Cash Register (Exhibit P_1).

Exhibit P_2 is another Cash Register (smaller) and Exhibit P_{2A} Exhibit P_{2B} are the entries.

Exhibit P_3 is the C Roster, and Exhibit P_{3A}, Exhibit P_{3B} and Exhibit P_{3C} are the entries in the C Roster.

Exhibit P_4 is the D Register and Exhibit P_{4A} is the entry in the D Register.

Exhibit P_5 is the B Register and Exhibit P_{5A} is the entry in the B Register.

Exhibit P_6 is the ledger.

Exhibit P_{6A} is the entry relating to Rs.4 in the ledger.

Exhibit P_7 is the B Register of the Sub Judge's Court and Exhibit

Exhibit P_{7A} is the process number 2979.

Exhibit P_8 is the B Register.

Exhibit P_{8A} is the entry of process No. 4000.

Exhibit P_{8B} is the entry of process No. 4012.

Exhibit P

Exhibit P_{8C} is the entry of process No. 4155, and the following Exhibits were filed on behalf of the Court :-

Exhibit C_1 Record in O.S. No. 743 of 1899-00.

Exhibit C_2 Record in O.S. No. 592 of 1897-98.

Exhibit C_3 is the Witness Register.

Exhibit C_4 is the A Register.

Exhibit C_{4A} and Exhibit C_{4B} are the entries in the A register (Exhibit ~~C4~~ C_4).

Exhibit C_5 is the A Register.

The accused stated that before the introduction of the permanent advance system i.e., before 1905, all the processes of the courts in Bangalore were sent to him for service, that if ~~he~~ in those processes there were any witness' summons, it was customary to send the witness' batta amount in cash along with the summons or the processes were allowed to be accumulated and then sent afte being separated to be served in their respective places, that ~~he~~ he received back the three amounts given to Ramakrishnayya, that before this money was sent he had sent the processes unserved, tha he gave the summonses to one of his summons servers of his office, paid the batta out of the amount that he had with him, got them served on the witnesses that had come there and after taking the acknowledgment of service on the back of summons, returned them to the courts, that as it was his duty to see that the processes were ~~served~~ served, he got them served in this manner, that when he got the money from Ramakrishnayya, that money was adjusted to the amount he had spent, that the column in the C roster which indicated that the process was still due from the process server and which was kept uninitialled, was afterwards struck off in red ink and initialled to show its return, that as regards the delay in the matter of sending Rs.4, ~~which was~~ it was difficult to return the money along with the processes, that the summonses were again reissued to those witnesses who had not been served and the same amount was ordered to be utilized and this practice went on upt the termination of a case, that it was also usual to send the money only once, that he was not responsible for the ~~debt~~ date put

down

down by Ramakrishnayya, that he has credited the amount on the da; he received, that if the money was shown in the C Roster and omitted to find a place in the B Register, it would appear as if the money was not sent to the court, but as that money was paid to th witnesses, there was no necessity to send it to the court and that such amounts had been struck off in the C Roster.

The accused was charged as follows :-

(1) That you, on or about the 23rd day of March 1901 at Bangalore City having been in any manner entrusted by process-server Ramakrishnayya with one rupee unexpended batta on process No.4000 in your capacity as a public servant viz.,Central Nazir committed criminal breach of trust in respect of that money and thereby committed an offence punishable under section 409 of the I.P.C. and within my cognizance.

(2) That you on or about the 23rd day of March 1901 at Bangalore City having been in any manner entrusted by process-server Ramakrishnayya with half-a-rupee, unexpended batta on process No. 4155 in your capacity of a public servant i.e., Central Nazir committed criminal breach of trust in respect of that money and thereby committed an offence punishable under section 409 of the I.P.C. and within my cognizance.

(3) That you on or about the 18th or 19th day of March 1901, at Bangalore City having been in any manner entrusted by process server Ramakrishnayya with two ruppes unexpended batta on process No.4012 in your capacity of a public servant i.e., Central Nazir committed criminal breach of trust in respect of that money and thereby committed an offence punishable under section 409 I.P.C. and within my cognizance.

The accused pleaded not guilty to the charge and stated that excepting Seshagiri Rao all the other prosecution witnesses are to be cross-examined, that he would file a list of D.W. that the parties were themselves producing the witnesses when the batta amount was paid to them, that the acknowledgement of such

witnesses

witnesses had been obtained on the back of the summonses, ~~xx~~ which were sent to the court, that as the money received from Ramakrishnayya was not due to the court, he got it adjusted to the amount originally paid by him.

The defence examined :-
(1) Ranga Char. (2) Munisamy Raju, and the following Exhibit were filed :-

Exhibit D_1 is the list of books and papers handed over by the accused.
Exhibit D_2 is the circular.
~~xxxxxxx~~

J U D G M E N T

1. The case for the prosecution is as follows :-

The accused was the Central Nazir in Bangalore in 1901. The Additional Munsiff's Court in Bangalore sent him for servi with the necessary batta, 3 processes 4000, 4155 and 4012. Process server Ramakrishnayya to whom these processes were entrusted with batta for execution, returned certain unexpended batta to the accused. The accused did not refund this unexpended batta to the court, but showed instead in the C Roster after making certain corrections that there was no unexpended batta. The charges against the accused are that he has commited criminal breaches of trust with respect to these amounts of unexpended batta.

2. The defence is that the amount due to witnesses were afterwards paid to the witnesses who appeared in person before the Central Nazir and that this is the reason for the corrections in the C Roster.

3. I have carefully studied this case and it reminds me in some features of the Bacon-shakespeare contraversy. No contemporary discovered the misappropriation. The then additional Munsiff and his establishment, and the parties in the cases concerned passed over the matter, having discovered nothing.

Now after the space of over ten years, misappropriation is sought to be established on the basis of Registers alone, the original summonses and the witnesses for whom the summonses were issued not being available. No one speaks of personal recollection. Of course lapse of time is no objection if the offence can be proved. The question is - can the offence be proved and are not the strictest rules of evidence to be applied ?

Now in every one of the cases now under consideration, the accused has noted in the C Roster that the witnesses were duly served and that there was no unexpended batta. This amounts to an accounting. The prosecution have to prove that this is false accounting. That is, the burden of proof lies on them. They say that Ramakrishnayya did not serve the process. The accused replies - yes, but the process was served afterwards before it was sent to cour The prosecution say that such subsequent service is prohibited. In reply, the accused elicits from Mr. Satyaji Rao the statement that there is no rule forbidding such a course, and examines a couple of defence witnesses to show that that was a common course I took some evidence on behalf of the court. But that is inclusi- Witnesses even though served may not appear before the Judge as in Case No.743 on 11/3/01. The absence of a witness from Court is therefore no proof that he was not served. The Judge's notes and the witness Register are therefore not of much value. In the A Register, rough notes have sometimes been made to show the kind of service effected, but these notes are not required to be made as a matter of duty, and are capriciously made or omitted and cannot be relied on, either as matter of law or as matter of fact

examine the witnesses

The table of costs which is available only in O.S. No.592 the case in which process No.4012 was issued, when compared with the ledger of the case, shows that one rupee more was entrusted t the accused than the amount taken from the back of the proce es and entered in the table of costs. That shows if the table of costs and the ledger are correct, that the accused could not possibly have misappropriated the Rs.2 which is one item and is not

not composed of two items of one rupee each. There is no pencil note in the A Register regarding the mode of service of this process No. 4012 and this absence of remark may mean that the process was personally served, in other words, that accused's theory of subsequent service is true. All this shows the great danger of acting on the evidence provided by the prosecution in this case.

The corrections in the C. Roster show that they were made on the day that the process server returned the money or soon after, and it is incredible that the accused should have falsifie the accounts so soon, when the original summonses were yet in Court and not destroyed under the rules, and when the unexpended batta might at any time have been recalled by the court or ordered to be used for another process. The Public Prosecutor met this argument, not by pointing out anything in the case of the processes which form the subject-matter of the charges, but by pointing out that in the case of process No.3655, the zero originally put in the column of unexpended batta had been altered to 4 Rs., and arguing that the alteration must have taken place after a call came from the Court. Now the B Register shows that it was quite usual for the Central Nazir to keep unexpended batta with him and make use of it for frssh processes issued and therefore there is nothing unusual in the Central Nazir returning the money only when called for.

As regards the correction of Zero to four rupees, there is absolutely no evidence that it was made just before the court made the call and it is thus impossible to rely on process No. 3655 for proving guilty intention in the making of the corrections.

The accused may have as he says used permanent advance money to pay witnesses and may have recouped the permanent advance later on when the process servers came to Head-Quarters and refunded the unexpended batta. I do not think that there is any offence for the Criminal Court in such a procedure.

In conclusion I hold that the burden of proving false accounting lay on the prosecution and that the burden can be discharged only by showing what the endorsements on the summonses were. The summonses have been destroyed and there is no secondary evidence as to what the summonses contained. The witnesses who were summoned in 1901 have not been produced by the prosecution. That Ramakrishnayya did not serve the processes does not eliminate the probability that the Central Nazir may have had them served in his presence, and the Judge's notes and the witness Register are useless as witnesses served are often absent in Court. The presumption of innocence is therefore to prevail.

I think that the accused cannot be convicted on the counts charged.

As regards the Sessions offences, I kept them aside for misjoinder and that does not amount to a discharge within the meaning of 24 Madras 136 which does not contemplate misjoinder. That the stage for passing an order under section 209 Criminal Procedure Code is not now, but is before charges are framed for trial befor the Magistrate, is also clear from the final judgment in 24 Mad. 136. I have not passed and I do not pass, an order under section 209 Criminal Procedure Code. But I record that I do not under section 347 Criminal Procedure Code take up the Sessions cases and commit them to the Court of Sessions, as in my opinion, there are not sufficient grounds for commitment. Finding the accused not guilty I acquit him of the offences for which he has been tried viz., those punishable under section 409 ~~Criminal Procedure~~ Indian Penal Code.

In Open Court.

Sd/- B. Venkoba Rao,
City Magistrate,
Bangalore.

Dated 18-3-1913.

"Copy"

A.V.

Registrar.

IN THE COURT OF THE CITY MAGISTRATE,

B A N G A L O R E.

Dated, the 18th day of March 1913

Present:- B.Venkoba Rao, Esq., . . .

Criminal Case No. 102 of 1912-13.

Complainant	Vs	Accused.
Government		Narayana Sastry

J U D G M E N T.

I The case for the prosecution is as follows:-

The accused was the Central Nazir in Bangalore in 1901. The Additional Munsiff's Court in Bangalore sent him for service with the necessary batta three processes 4000, 4155 and 4012. Process Server Ramakrishnayya to whom these processes were entrusted with batta for ~~prosecution~~ execution returned certain unexpended batta to the accused. The accused did not refund this unexpended batta to the Court, but showed ~~instead~~ instead in the C.Roster after making certain corrections, that there was no unexpended batta. The charges against the accused are that he has committed criminal breaches of trust with respect to these amounts of unexpended batta.

II. The defence is that the amounts due to the witnesses were afterwards paid to the witnesses who appeared in person before the Central Nazir, and that this is the reason for the corrections in the C.Roster.

III. I have carefully studied this case, and it reminds me in some features of the Bacon-Shakespeare controversy. No contemporary discovered the misappropriation. The the

Additional Munsiff and his establishment, and the parties in the cases concerned passed over the matter, having discovered nothing. Now after the space of over ten years, misappropriation is sought to be established on the basis of Registers alone, the original summonses and the witnesses for whom the summonses were issued not being available. No one speaks of personal recollection. Of course, lapse of time is no objection if the offence can be proved. The question is - can the offence be proved and are ~~x~~ not the strictest rules of evidence to be applied?

Now in every one of the cases now under consideration, the accused has noted in the C. Roster that the witnes-es were duly served and that there was no unexpended batta. This amounts to an accounting. The prosecution have to prove that this is false accounting. That is, the burden of proof lies on them. They say that Ramakrishnia did not serve the process. The accused replies - yes but the process was served afterwards before it was sent to Court. The prosecution say that such subsequent service is prohibited. In reply, the accused elicits from Mr. Satyaji Rao the statement that there is no rule ~~prohibiting~~ forbidding such a course, and examines a couple of defence witnesses to show that that was a common course. I took some evidence on behalf of the Court. But that is inconclusive. Witnesses even though served may not appear before the Judge as in case No. 743 on 11-3-1901. The absence of a witness from Court is therefore no proof that he was not served. The Judge's notes and the witness Register are therefore not of much value. In the A Register, rough notes have sometimes been made to show the kind of service effected, but these notes are not required to be made as a matter of duty, and are capriciously made or omitted and cannot be relied on, either as matter of law or as matter of fact.

The table of costs which is available in O.S. No. 592 the case in which process No. 4012 was issued, when compared with the ledger of the case, shows that one rupee more was entrusted to the accused than the amount taken ~~down~~ from the back of the processes and entered in the table of costs. That shows if the table of costs and the ledger are correct that the accused could not possibly have misappropriated the Rs. 2/- which is one item and is not composed of two items of one rupee each. There is no pencil note in the A Register regarding the mode of service of this process No. ~~4013~~ 4012. And this absence of remark may mean that the process was personally served. In other words, that accused's theory of subsequent service is true. All this shows the great danger of acting on the evidence provided by the prosecution in this case.

The corrections in the C. Roster show that they were made on the day that the process server returned the money or soon after, and it is incredible that the accuse should have falsified the accounts so soon, when the original summonses were yet in Court and not destroyed unde the rules, and when the unexpended batta might at any time have been recalled by the Court or ordered to be use for another process. The Public Prosecutor met this arg ment, not by pointing out anything in the case of the processes which form the subject matter of the charges, but by pointing out that in the case of process No. 3655, the zero originally put in the column of unexpended batta had been altered to Rs. 4/-, and arguing that the alteration must have taken place after a call came from the Court. Now the B Register shows that it was quite usual for the Central Nazir to keep unexpended batta with him and make use of it for fresh processes ∮ issued and therefore there

is nothing unusual in the Central Nazir returning the money only when called for. As regards the correction of zero to four rupees, there is absolutely no evidence that it was made just before the Court made the call and it is thus impossible to rely on process No. 3655 for proving guilty intention in the making of the corrections.

The accused may have as he says used permanent advance money to pay witnesses and may have recouped the permanent advance later on when the process servers came to Headquarters and refunded the unexpended batta. I do not think that there is any offence for the Criminal Court in such a procedure.

In conclusion I hold that the burden of proving false accounting lay on the prosecution and that burden can be discharged only by showing what the endorsements on the summonses were. The summonses have been destroyed and there is no secondary evidence as to what the summonses contained. The witnesses who were summoned in 1901 have not been produced by the prosecution. That Ramakrishnayya did not serve the processes does not eliminate the probability that the Central Nazir may have had them served in his presence, and the Judge's notes and the witness Register are useless as witnesses served are often absent in Court. The presumption of innocence is therefore to prevail. I think that the accused cannot be convicted on the counts charged.

As regards the sessions offences, I kept them aside for misjoinder and that does not amount to a discharge within the meaning of 24 Mad.136 which does not contemplate misjoinder. That the stage for passing an order under Section 209, Criminal Procedure Code, is not now but is before charges are framed for trial before the Magistrate, is also clear from the final judgment in 24 Mad. 136. I have not

passed

passed and I do not pass, an order under Section 209, Criminal Procedure Code. But I record that I do not under section 347, Criminal Procedure Code, take up the sessions cases and commit them to the Court of Session, as in my opinion, there are not sufficient grounds for commitment.

Finding the accused not guilty I acquit him of the offences for which he has been tried, viz, those punishable under Section 409, Indian Penal Code.

In open Court.

Sd/- B.Venkoba Rao,
City Magistrate.

" C o p y "

REGISTRAR.

N.G.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Friday, the 7th day of February 1913.

Before Mr. Justice E. H. WALLACE.

Criminal Revision Petitions Nos. 93, 94, 95 & 96 of 1912-13.

Government ... Complainant ... Petitioner

(By Mr. S. Ranganna, Public Prosecutor)

Vs

G. Narayana Sastry ... Accused ... Opponent

(By Mr. C.B. Seshagiri Rao)

Petitions against the orders of the City Magistrate of Bangalore in Criminal Cases Nos. 102 of 1912-13 and No. 802 of 1911-12.

These petitions coming on for hearing on ~~Tueday~~ Tuesday, the 4th day of February 1913, the Court pronounced the following :-

O R D E R.

These petitions, apart from the merits of the case and apart from the question whether they ought to have been filed in the first instance before the Sessions Judge or the District Magistrate, raise a point on which they may be decided without further delay and waste of time.

2. The Public Prosecutor in these requests that this Court will order the accused in Criminal Cases Nos. 802 of 1911-12 and 102 of 1912-13 at present pending on the file of the City Magistrate, to be committed to Sessions for an offence under section 477A, Indian Penal Code. The Magistrate in these cases has declined to frame a charge under

under that section and has proceeded to charge accused under other sections triable by himself and is now engaged in hearing his defence to the charge framed. The Public Prosecutor contends that omission to frame a charge under Section 477A, one of the offence, charged in the charge sheet is tantamount to an order of discharge under that section and that he is entitled at this stage to press for a revision of that "order of discharge".

3. I am unable to accept the Public Prosecutor's contention on either point. Though it has been held in I.L.R 34 Mad. 136 that an omission to pronounce an order of discharge under section 209, Criminal Procedure Code, does not imply that the accused has not been 'discharged', the case therein cited was one in which the trial had been finally closed before the Magistrate whose proceedings were in question. It is clear that in such cases where the accused has as a matter of fact been actually discharged from further attendance on the Court for the trial of his case, he has really been 'discharged' in the legal sense, though no formal order of discharge has been pronounced. But while the case is still open and under trial, while, that is, the Magistrate is still at liberty if he wishes, to frame a fresh charge unde a particular section, under which he has as yet yet refrained from framing a charge, and has not pronounced any formal order of discharge of the offence under that section, I do not see how it can be held that at that stage he has pronounced such an order, and if 34 Mad. 136 must be interpreted in such a manner, I am unable to follow it. The City Magistrate in his order under review, maintains that he has not pronounced any order of discharge and that it is still open to him to commit if he thinks fit.

4. On the second point, even assuming that we must take it that an order of discharge has been pronounced, I am unable to find any authority to warrant a Court of ~~Revis~~ Revision interfering during the pendency of a trial and ~~orde~~ ordering the trying Magistrate to alter or amend the charge he has framed on his opinion of the evidence. Such an interference would be contrary to all rules of practice and procedure, would hamper the independence of a trying Magistrate and would mean that the revising or superior Court was trying the case pari passu with the trying Court and prejudging and deciding it before the trying Court had pronounced its order or judgment therein. Such an arbitrary procedure seems to me wholly unwarrantable and entails a grave abuse of judicial authority.

5. I ~~so~~ therefore reject these petitions and with them the review petitions (Criminal Revisions Petitions Nos. 94 and 96) ~~and~~ against the admission of the accused to bail.

6. As regards the latter question, I must record my disapproval of the tenour and contents of the City Magistrate's order admitting the accused to bail. It reads more like an apology for his action than a judicial order, and remarks on the difficulty of securing the attendance of an official witness and the attitude of the Public Prosecutor having nothing to do with the question of releasing accused on bail, which is a matter resting purely on the quality of the evidence against him.

Sd/- E. H. Wallace,
JUDGE.

" C o p y "

N. Rajalingam

R.G. REGISTRAR.

IN THE COURT OF THE CITY MAGISTRATE OF

B A N G A L O R E.

Dated, the 18th March 1913.

Present.- B. Venkoba Rao, Esq., . .

Criminal Case No. 802 of 1911-12.

Complainant	Vs	Accused.
Government		Narayana Sastry

J U D G M E N T.

I The case for the prosecution is as follows :-

The accused was the Central Nazir in Bangalore for many years under several officers. His last officer was Mr. B. Nagappa, Subordinate Judge, who took charge of the Central Nazarath in the latter part of 1909 and continued in charge of it until its abolition at the end of June 1911.

After the abolition of the Central Nazarath, the Comptroller wanted certain information connected with the leave of a certain official in the Central Nazarath days. Also certain officials of the Central Nazarath complained that they had not received their pay in the central Nazarath days. Eventually the District Judge held an inquiry. The accused Narayana Sastry then said among other things that his officer Mr. Nagappa was in the habit of passing oral orders about appointments and that he (Mr. Nagappa) had so orally appointed certain persons. The District Judge then sent the records to Mr. Nagappa for explanation. Mr.Nagappa then started a research into the past doings of Narayana Sastry. Ultimately the present prosecution was begun. The

The accused has been tried on three counts. The first is - he drew pay for one V. Srinivasa Rao who never worked, pretended to have disbursed the pay to him by forging his signatures in the barawards and committed criminal breach of trust with regard to the money involved i.e. Rs. 35/- for the five months beginning with July 1910. The second count is - he drew pay for one Rama who never existed, pretended to have disbursed the pay to him by forging his signatures in the barawards and committed criminal breach of trust with regard to the money involved i.e. Rs. 14/- for the months of April and May 1911. The third count is - he took possession of Rs. 2/- attached cash in an execution case, as usual, entered the money in the Curator's Register as usual but scored out the entry and finally failed to hand over the amount to his successor on the abolition of the Central Nazarath, thereby committing criminal breach of trust with respect to the Rs. 2/-. The evidence is as follows:-

As regards the first count, V. Srinivasa Rao says that he did not work, that the signatures are not his and that he did not receive the pay. A C.Rosters show that V. Srinivasa Rao did not serve processes in the period.

As regards the second count, one Korachar Ramayya says that he did not work, sign the baraward or receive the pay. Mr. Nagappa says that he appointed no other Rama. There is no written order to show the appointment of the Rama in question. The pay-bill for April 1911 does not mention Rama, while the baraward mentions it.

As regards the third count, Kuppusawmi Mudaliar and Mahadeva Rao who took charge from the accused, produce the list prepared at the time of taking over charge, and say that the Rs. 2/- was not paid by the accused. The

Rs. 2/- had not been paid to the party concerned in the execution case.

II. The accused Narayana Sastry pleads not guilty. The defence witnesses say as follows :-

(a) As regards the first ~~acc~~ count :-

V. Srinivasa Rao was continuously on duty without break over a period of time including the months in question.

(b) As regards the second count :-

The Rama in question existed, was wroking in Mr. Nagappa's house and was drawing his pay.

and (c) As regards the third count :-

The Rs. 2/- were duly paid to Kuppusawmi Mudaliar by the accused.

The accused produced another charge patti (Exhibit D_{11}) that was with him to show that the Rs. 2/- in question has been acknowledged under the initials of Kuppusawmi Mudaliar and Mahadeva Rao.

III. I have heard arguments at length and fully considered the case.

My views are as follows :-

There are discrepancies in V. Srinivasa Rao's evidence.

(1) He says that the signature in the November baraward is not his, while his statement that he signed the baraward in the latter part of Kartika and took his pay, means that his signature in the November baraward

must be genuine.

(2) V. Srinivasa Rao says that he left Bangalore because the accused ~~sads~~ said that the vacancy in which V.Srinivasa Rao was ~~wpo~~ working had ceased. We know that the vacancy had not ceased. V. Srinivasa Rao's evidence on the point must therefore be untrue, or the accused must have misled V. Srinivasa Rao for the purpose of getting a gratification. In the latter case, it is improbable that V. Srinivasa Rao would have again been appointed by the accused without any gratification. But V. Srinivasa Rao does not speak of any gratification having been given. It has been suggested that the undisbursed pay of V. Srinivasa Rao might itself have been the gratification, but it would not have been gratification <u>from</u> V. Srinivasa Rao necessitating the doing of favour <u>to</u> Srinivasa Rao, unless Srinivasa Rao was aware of the passing of the gratification. Srinivasa Rao does not speak of any such knowledge on his part.

These discrepancies show that the evidence of Mr. V. Srinivasa Rao must be untrue. But what could be his motive for giving false evidence against his benefactor the accused? On careful consideration, I believe that both fear and hope influenced V. Srinivasa Rao. V.Srinivasa Rao appears to have now and then gone to his place near Yelahanka at week-ends and on occasions such as his father-in-law's death. These occasional absences have not been noted in the baraward, perhaps because the accused properly or improperly considered thos<u>e</u> periods as privilege or casual leave. V. Srinivasa Rao must have felt that if he spoke of doing continuous service, these absences at Yelahanka could be proved against him for more than their real value. There is no signature of V. Srinivasa Rao in the July baraward and if V. Srinivasa Rao spoke of

receiving

receiving the pay in that month also, he might not have been believed even if he were speaking the truth that by forgetfulness ~~x~~ he omitted to affix his signature. On the other hand, it has often been noticed by eminent observers in India - if my memory serves me right, from at least the time of Maharaja Nandkumar, that when a man is in the bad books of persons in power, witnesses are ready to come forward to vilify the man in trouble, without any real inducement at all from the ~~other~~ persons in power. So great is the desire to please men in power, although the latter may not desire such conduct ~~al-att~~ at all. In the present case V. Srinivasa Rao was remarkably cautious in feeling his way before he took a definite line. He began by saying before Mr. Nagappa that he "suspected" the-~~signat~~ signatures — Vide page 10 of Srinivasa Rao's evidence before me. He afterwards became positive that the signatures were "not" his. He must have known at the time he was giving his statement before Mr. Nagappa, that he was about to be given a permanent appointment as a process server. The situation must have been in fact such for V. Srinivasa Rao that it would have been superhuman for him if he had preferred the line of truth to the line of least resistance assuming that the truth was favourable to the accused. I mean no reflection on Mr. Nagappa or any other officers, and to use the words of Lord Macaulay in his Essay on Warren Hastings, I consider them gentlemen of 'too much honor knowingly to countenance false accusations.' If there is still any weight in V. Srinivasa Rao's evidence after all that has been said, it is outbalanced by the defence evidence to the effect that V. Srinivasa Rao was continuously in service. The Public Prosecutor says that the defence evidence on the point is vague, but I think that people of the same official status would have noticed

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the absence of V. Srinivasa Rao for five months, if he had been really absent for such a long period. The celerity with which news of a 'vacancy' temporary or otherwise spreads among co-ordinate officials is, to those who have observed it, ~~tre~~ truly amazing.

V. Srinivasa Rao continuously kept his rented hous in Bangalore and on the whole I believe that he did draw his pay continuously, i.e. every month, having been probably orderly for a ~~long~~ lengthened period like Korachar Ramayya. The forgetfulness of the accused to take the signature of V. Srinivasa Rao in the July Baraward may be the act of an innocent man or a criminal and ~~does~~ does not by itself raise any presumption of guilt. V. Srinivasa Rao's evidence not being believed, the omission of the signature in the July Baraward amounts to a mere failure to render accounts whic is not itself a criminal breach of trust, 9 All. 666.

I now turn to the second count. The signatures of Korachar Ramayya and Rama are so different that the accused could not have told Mr. Nagappa at any time that t two Ramas were identical. The accused appears to have maintained from the beginning of the controversy that ther were two Ramas. The examination of Korachar Ramayya by the prosecution appears to have been a superfluity. That another Rama existed, did work and drew pay is proved by the defence witnesses. It has not been proved that appointments were always being made by written orders. Mr. Nagappa himself admits that one Hanumantha and one Munisawmi were as a matter of fact, appointed, although no ~~writ~~ written orders are forthcoming — Vide pp. 43 and 46 of Mr. Nagappa's evidence. The evidence of Mr. Nagappa that Rama was not appointed is in my opinion not a matter of memory at all but a judgment based on a process of reasoning That Mr. Nagappa had not clearly analysed the nature of the

mental processes in his mind is perfectly obvious. On p. 14 of his evidence before me he says "I relied on the accused and signed the pay ~~bo~~ bills and barawards. x x Some insertions were made after I signed the pay bill and baraward". If Mr. Nagappa used to rely on the accused so entirely, would it have been difficult for the accused to make insertions before Mr. Nagappa's signature? Why should he make subsequent insertions? In the passage cited, Mr. Nagappa practically asserts that he was both checking and blindly signing the pay bills and ~~barawrds~~ barawards. And the point of this statement of Mr. Nagappa is that it occurs in the chief Examination. On page 20 which is ~~x~~ still examination-in-chief, Mr. Nagappa speaks of subsequent insertions and on page 24, he speaks of the fear of the accused for his checking. On page 57, he speaks of signing paybills and barawards without checking them. Two rival theories thus evidently held possession of Mr. Nagappa's mind - one that he checked and the other that he did not check the paybills and barawards. While I fully sympathise with the position of an officer who has often ~~on~~ to depend on the loyalty of his subordinate, I think that some sympathy is due also to the official who may imagine that the signature of his officer is some protection and finds that it is not. If Mr. Nagappa checked his signature is a protection. If he did not check, his ignorance or forgetfulness of what really happened is also a protection. But the combination of checking and not checking must really be a hard thing for the subordinate t contend with.

I must refer to other points also. On page 47, Mr. Nagappa says 'I did not appoint R.Seshia. I am positive about it, becuase after January 1911, I have invariabl reported acting appointments to the Chief Court.' On

page 90, Mr. Nagappa says 'I don't remember granting leave to Narasimha Sastri in April 1911. There is no order granting leave to Narasimha Sastri in April and May 1911, or appointing a substitute." On page 91, Mr. Nagappa says that 'for the following reasons' he has 'reason to believe' that Narasimha Sastri was not on leave in April and May 1911. It is remarkable that in every one of the passages quoted above, Mr. Nagappa supports by reason a statement apparently made from memory. The reason is not a fact remembered by the principle of association of ideas but is th state of a record i.e. file of ~~pay~~ orders subsequently examined. In my judgment Mr. Nagappa has not carefully observed the distinction between memory proper, and a conclusion arrived at by a process of reasoning. Mr. Naga~~ppa~~ppa's reasoning is as follows:-

(1) I invariably passed ~~witten~~ written orders.

(2) There is no written order in this case.

(3) Therefore I did not appoint the man or give leave to him.

As I said before, Mr. Nagappa himself has had to admit that Hanumantha and Munisawmi were really appointed but that no written ~~and~~ orders are forthcoming. I consider it therefore a most dangerous proposition to hold that because no written order is forthcoming, a man was never appointed. Assuming that Mr. Nagappa is right in saying that he invariably passed written orders, the written orders may have been mislaid. These written orders were at one time considered so unimportant that they were handed over by the accused to his successor without a ferist.

If in the light of these remarks, pages 17 and 18 of Mr. Nagappa's evidence be read, it will be seen that he came to the conclusion that Rama was not appointed,

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after examining the accused, calling for the orders of appointment and examining Korachar Ramayya - I am convinced that Mr. Nagappa's statement that Rama was not appointed must be looked upon not as a matter of memory but as a conclusion arrived at by a process of reasoning. Without the slightest reflection on Mr. Nagappa's personal honour, I am able therefore to believe the defence evidence that a Rama other than Korachar Ramayya did work and draw his pay.

In this connection, the following dicta deserve to be kept in view. They are from Amir Ali and Woodroffe's Law of Evidence, Vth Edition, general introduction page 4.

When one witness deposes to a certain fact having occurred, and another witness, stating that he was present at the same time, denies that any such fact took place, greater weight, other things being equal, is to be attached to the witness alleging the affirmative. "Upon general principles, affirmative is better than negative evidence. A person deposing to a fact, which he states he saw, must either speak truely or must have invented his story, or it must be sheer delusion. Not so, with respect to negative evidence; a fact may have taken place in the very sight of a person who may not have observed it, and if he did observe, he may have forgotten it."

Mr. Nagappa's extensive researches into the doings of the accused after the latter said that Mr. Nagappa was passing oral orders, have been attributed to just moral indignation on the one hand and to feelings of revenge on the accused on the other. Moral indignation against one who had been long a trusted subordinate might have been satisfied by getting the subordinate in question convicted

on a few points, let us say, those at first raised, and feelings of revenge are incompatible with the character of a gentleman like Mr. Nagappa. My view that Mr.Nagappa was mistaking his reasoned conclusions, for memory finds a way out of the dilemma. For, my view at once shows the probability that Mr. Nagappa may have made extensive researches for the purpose probably unconscious of strengthening his memory, i.e. his reasoned conclusions by means of similar transactions. No arguments were addressed to me on either side as regards similar tranaactions, but assuming that they are admissible, they can have little weight when there is definite evidence that Rama really worked and drew his pay in this particular case.

To sum up this part of the case then, I do not think I can find the accused guilty on the second count.

I now proceed to the third count.

In June 1912, i.e. about a year after taking charge, Kuppusami Mudaliar discovered that the Rs.2/- had not been paid to him by the accused — Vide page 8 of Kuppusami Mudaliar's statement. In a remarkably short time after this, i.e. in July 1912, the party applied for a refund of the Rs. 2/-. The accused was taken to be guilty and no departmental explanation was taken from him The earliest chance of discovering Exhibit D_{11} did not therefore occur. When Exhibit D_{11} was produced to Kuppusami Mudaliar in cross examination, he at first ~~as~~ admitted his initials near the Rs. 2/-, then faltered and then denied his initials. On page 10 of his evidence, Kuppusami Mudaliar says that he did not compare either of the charge pattis Exhibit P_{37a} or Exhibit D_{11} with the Curator's Register. On page 9 of his cross examination after charge, however he says that he referred to the

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Curator's Register as a matter of course. Kuppusami Mudaliar goes on to say in the latter passage "I never referred to VIIB. There was no necessity to refer to VIIB, as it contains even articles left with surety". There is a subtle fallacy implied in this passage. Because Kuppusawmi Mudaliar did not see VII B, it does not follow that the accused did not see it. The accused's method of keeping the Curator's Register appears to honestly differ from Kuppusawmi Mudaliar's method, in that the former mentions the attached cash in VII B only. So assuming that Kuppusawmi Mudaliar may have looked at the Curator's Register only, the accused may have looked at VII B Register also. To assume that because Kuppusawmi Mudaliar who did not know accused's method did not look at the VII B Register, the accused also did not look at it, is to make the mistake of Svetaketu of the Chandogya Upanishad who assumed that because he did not learn a thing, his teachers also must have been ignorant of it. That there was an honest difference in the method of maintaining the Registers, between Kuppusawmi Mudaliar and the accused, is clear from the evidence of Kuppusawmi Mudaliar himself. On page 18 of his evidence after charge, Kuppusawmi Mudaliar says with regard to 1-15-6 that has not been misappropriated by the accused, that it has not been entered in the Curator's Register as it "ought to have been". What appears to me probable is that while the accused looked at VII B also and gave the Rs.2/-, Kuppusawmi Mudaliar imagined that everything would be in the Registers and that they would always explain themselves, and paid attention particularly only to the list submitted by the accused. That the accused did not depend on the Curator's Register alone in having Exhibit D_{11} prepared, is obvious, for the 1-15-6 which undoubtedly was handed over is not taken from the Curator's Register at all.

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The probability of my view will appear in a clearer light when it is considered what the view contrary to mine implies. It implies that the accused after he came to know of his mistake in the Rs. 2/- affair, committed forgery on Exhibit D_{11} the chargepatti with him, while he was in custody for this trial. It is difficult to conclude that the accused had opportunities for committing forgery while he was in custody.

It is all important that the Rs. 2/- case against the accused should be considered independently, without reference to any vague prejudices against the accused on account of the multifarious charges against him. If the accused had not been undergoing a trial, and if the two charge pattis had been placed before any authority for deciding whether Kuppusawmi Mudaliar or Narayana Sastry should be proceeded against, it would have been hard for that authority to give a decided opinion. Kuppusawmi Mudaliar is as likely to forget things as any one else, and as I have already pointed out, Kuppusawmi Mudaliar's memory as to what really happened at the time of transfer of charge is vague. He says first that he did not compare either of the chargepattis with the Curator's Register, and then he declares later on that the Curator's Register was referred to "as a matter of course". The use of the words 'as a matter of course' is in my opinion a plain confession that he has no distinct ~~rel~~ recollection of what occurred. Then how can Kuppusawmi Mudaliar be certain that the Rs.2/- were not given to him? It comes to this :- Kuppusawmi Mudaliar before he saw Exhibit D_{11} ~~declares~~ declared that he had not received the Rs. 2/-. This declaration must have been based not on memory but on the chargepatti with him. After Kuppusawmi Mudaliar saw the other chargepatti,

even

even if he was convinced of a mistake on his part, he could not avow it, without subjecting himself to ridicule - and what is ~~wro~~ worse, the risk of a criminal prosecution. Evidence given under such temptations to state the untruth, cannot be acted upon without the gravest danger.

When two chargepattis ~~de~~ differ, it does not at once follow that one of them is a forgery. The difference may be due to honest mistake~~s~~. The efficiency of a check depends on the shrewdness with which possible sources of mistake are foreseen, and the strength of memory on a particular point depends on the attention and trouble bestowed on the point while it is taking place. Kuppusawmi Mudaliar impressed me as an efficient man and his check in 1911 at the time of transfer of charge must have been efficient. He says that the accused asked him to take charge on the evening of the day on which the chargepattis were ready, but that he Kuppusawmi Mudaliar did not like to take charge in a hurry, and actually took charge on the 3rd day, although the chargepattis were antedated to avoid having to give explanation for delay. Now it seems to me that a careful man like that who would not be hurried is very likely to have seen the VII B Register also, in order to get at a description of the documents numbered but not described in the Curator's Register. This is however a side point. I have already indicated how even if Kuppusawmi Mudaliar did not see the VII B Register, the accused is likely to have seen it. Coming back to my main line of argument, what I wish to note is that an efficient man is often a man of weak memory even as regards the points that he did check in detail, because the efficiency of an efficient man is without effort, and what is done without effort is not long remembered. Efficient check at the time by Kuppusawmi Mudaliar is thus quite compatible with his weak memory that I have already commented upon. If there had been an effi-

efficient check, what was discovered in June 1912 even before the party came, could have been discovered in July 1911 and the payment of Rs. 2/- in Exhibit D_{11} may be a fact. I will go further and add that Kuppusawmi Mudaliar may have checked things carefully and yet may have been careless in the matter of comparing the two chargepattis. Some people think that so long as what they sign is correc they need not fear anything. Other people think that it does not matter how negligent they ordinarily are, provided they act with caution in the matters that otherwise would land them in disaster. Now Kuppusawmi Mudaliar appears to belong to the first catagory, while Narayana Sastri belongs to the second. At all events, that is one probable explanation of the difference in the chargepattis Kuppusawmi Mudaliar would have thought that what he signed was correct, that it was the look out of other people to see that what they signed was correct, that other people were like himself and that his principle was sufficient to prevent mistakes. It was is in fact something like Freetraders thinking that every country would adopt Free Trade and that Free Trade was altogether an unassailable thing. Unfortunately some countries adopt Protection, and therein arises the difficulty. In this case, the careless way in which Narayana Sastry has kept his paybills and barawards indicates that he belongs to the second category that I mentioned to which Kuppusawmi Mudaliar does not belong, and it is very natural for Narayana Sastry to get the signature of the other party in Exhibit D_{11} as his protection, and leave the comparison of the two pattis unperformed just as he left the comparison of the paybills and barawards unperformed. If this is really what happened and it may well have happened, there is a humurous side to this very serious affair.

What I said of Kuppusawmi Mudaliar applies mutatis mutandis to Mahadeva Rao.

It will be obvious from what I have said that it is impossible to convict the accused on the third count.

This exhausts all the counts on which the accused has been really tried.

As regards the offences triable by the Court of Session, I separated them from this trial, not because at that time I found the charges groundless, but because they could not be considered in the present trial without violating the provisions about joinder of charges. In fact while I went on with 409, Indian Penal Code, I could hardly declare that 477A, Indian Penal Code, was groundless. One is evidence of the other. I never considered that 24 Mad. 136 had any application to this case, because in effect I declined to proceed with the sessions offences, not primarily on reasons based on evidence but for reasons relating to the joinder of charges. Because mis joinder is not fatal in a preliminary enquiry, it does not follow so far as I can see that the Magistrate can be compelled by parties to arrange on the same preliminary enquiry for a number of trials whether all the trails are to be before one tribunal, or whether some of them have to be before the Magistrate and some before the Court of Session. Such an absolute right in the party will be ~~qui~~ incompatible with the discretion of the Court. I did not wish to yield to this form of compulsion, but at the same time, I wished to keep my discretion wholly unfettered, should I at any future time, have thought that the case ought to be committed to the Court of Session. I now think that there are no sufficient grounds to commit the case to the Court of Session. But the final judgment in

24 Mad. 136 shows that the stage for passing orders under section 209, Criminal Procedure Code, is past.

In my view the legal position is this:- I did not on the merits discharge the accused of the sessions offences. I only kept aside the sessions offences for misjoinder. Therefore what I did, did not amount to a discharge as ~~acm~~ contemplated in 24 Mad. 136. The sessions offences could have been brought forward in a separate complaint, which the Public Prosecutor did not do. The sessions offences having been kept aside before charges were framed, no orders are now required about those offence unless I am prepared to commit them to the Court of Sessio As I said shortly before in this judgment, ~~and~~ I do not ~~see~~ now see any sufficient grounds for commitment, having had all the evidence before me.

In conclusion I find the accused not guilty of the offences punishable under Section 409, Indian Penal Code, and acquit him under Section 258, Criminal Procedure Code.

In open Court,

Sd/- B. Venkoba Rao,

City Magistrate.

" C o p y "

G. Gopalaswamy

REGISTRAR.

BL

N. G.

IN THE COURT OF THE CITY MAGISTRATE,

B A N G A L O R E.

Dated 30th September 1912.

Present :- B.Venkoba Rao, Esquire, B.A.,

Criminal Case No. 803 of 1911-12.

Complainant	Vs	Accused.
Mr. B. Nagappa (Government)		Narayana Sastry

J U D G M E N T.

The case for the prosecution is that the accused who was the Central Nazir in Bangalore for about 12 years, falsified the pay-bills and barawards and committed criminal breach of ~~law~~ trust with respect to the pay of the process servers entrusted to him. Mr. Ranganna, the Public Prosecutor, let in evidence about many matters, but in arguments he confines himself to what has occurred in the pay bills and barawards of August and September 1908.

What happened in these months was this:-

In August, Naranachar was shown in the pay-bill to be on other duty and Byra was shown as acting for him, while in the Baraward, Byra the acting man's name and signature were both scratched out, and the name, and signature of I or J Narayan Rao were substituted instead. In September Narana char is ~~known~~ shown to be on other duty as in August both in the pay-bill and the Baraward; but while in the Baraward, I or J.Narayana Rao's name and signature occur as those of the

the acting man, R. Hanumanthia is shown in the pay-bill as the acting man. In the Baraward of September as in that of August, the name and signature of I or J. Narayana Rao appear above the scratched out name and signature of Byra.

There is no ~~to~~ other evidence as to (1) whether Naranachar was really on other duty. (2) Whether Byra, R. Hanumanthia and I or J. Narayana Rao were appointed and did duty.

Byra, R. Hanumanthia and I or J. Narayana Rao do not seem to have served any processes in August and Septembe 1908, ~~and~~ *as* no C.Rosters have been found in their names. Whether they were orderlies or not ~~wa~~ cannot be definitely stated in the absence of the orderly book which is not forth coming.

Along with the I or J.Narayana Rao, ~~that~~ there is another T. Narayana Rao in each of these Barawards. The contention of the prosecution seems to be that these two Narayana Raos are identical, but this point cannot be said to have proved. The identity is merely a conjecture so far as I can see based on the similarity of the names.

Mr. Ranganna, the Public Prosecutor, sees the absence in this case of material to proceed upon, but he says that the mere payment (there is no evidence of non-payment) to one I or J. Narayana Rao in the baraward, while his name is not to be found at all in the pay-bill, constitutes criminal breach of trust, and he strongly relies on 33 A 249 to show that no further evidence is required from him. But what 33 A 249 really decides (the head-note is misleading) is simply that when there is a time at which payment shou be made or account rendered, and when at such ~~th~~ time neither payment is made nor account is rendered, a prima facie case of misappropriation is made out which the accused is to rebu

rebut, if he can. This proposition in which the proper time is the important element has no application to the facts of this case. But what Mr. Ranganna wants to ~~pay~~ lay down is probably the analogous proposition in which the proper person is the principal element. That is to say, if there is a proper person to whom payment is to be made, and if it is shewn that the accused has not made payment to that proper person, it is for the accused to show that the person to whom he made payment is the legal agent of that proper person. This proposition is certainly true in the abstract; but its application entirely depends on who the proper person is which is a matter of fact to be proved by the prosecution. In this case Mr. Ranganna assumes that the acting man mentioned in the pay-bill is the proper person. But what authority has the pay-bill which the Baraward has not? Both have to bear the signature or initials of the officer; and when the signature of the officer is discounted as being mechanical, both the pay-bill and the Baraward stand on the same footing, as productions of the accused. There is no independent evidence ~~as~~ such as the order of appointment to settle who was the proper person to receive payment. To assume that because no order of appointment is forthcoming, no order was ever made and the money is to be savings to Government, is too much to assume, because the file containing orders of appointment is clearly incomplete. When we are unable to find out who the proper person was to whom payment should have been made, we should see whom the accused <u>believed honestly</u> to be entitled to the money. Scratching out Byra's name and putting in I. Narayana Rao's name shows th the accused considered the latter to be the person entit to payment, and if Naranachar, or Byra or Hanumanthia w entitled to payment, they would not have kept ~~quite~~ qu t without complaining. If the amount was to be reall saving

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to Government, (i.e.) if both Byra and Narayana Rao were fictitious, the accused would not have taken the trouble to put one fictitious name for another. The explanation given by the accused in his written statement to the effect that Byra died and that therefore Narayana Rao was appointed is untenable, because if he had died, he could not have signed the August and September Barawards in September and October ~~nope~~ respectively. The accused alleges that I.Narayana Rao was paid according to Mr. Jayarama Iyer's orders. That Mr. Jayarama Iyer must have passed orders is fairly certain, for otherwise, Byra's name whether fictitious or real could not have been scored out in the former case becaus no purpose was to be ~~fa~~ gained by substituting one fictitious name for another and in the latter case because Byra would have complained unless orders came from proper authority. If the matter did come to the ~~ni~~ notice of Mr. Jayarama Iyer the fact that he did not leave on record any objection about Byra's name and signature having been entered first, absolves the accused from aspersions of dishonesty; so far as that matter is concerned. Without fraud and dishonesty, there can be no forgery or falsification or Criminal Breach of Trust.

On the whole, there is no case which if unrebutted would warrant the conviction of the accused and there are no sufficient grounds for committing the accused to the Court of Session. The accused is discharged of the offences complained of, 253 and 209, Criminal Procedure Code.

In open Court.

Sd/- B. Venkoba Rao,
City Magistrate,
Bangalore.

" C o p y "

N. Gopalakrishnan

N.G. REGISTRAR.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Friday, the 7th day of February 1913.

Before Mr. Justice E. H. WALLACE.

Criminal Revision Petition No. 92 of 1912-13.

Government of Mysore ... Petitioner (Compt)

(By Mr. S. Ranganna, Public Prosecutor)

Vs

G. Narayana Sastry ... Opponent (Accused)

(By Mr C B. Seshagiri Rao)

Criminal Revision Petition against the order of the City Magistrate of Bangalore in Criminal Case No. 803 of 1911-12.

This petition coming on for hearing on Tuesday, the 4th day of February 1913, the Court pronounced the following :-

ORDER.

1. The Public Prosecutor in this petition asks this Court under section 435, Criminal Procedure Code, to set aside the order of the City Magistrate, Bangalore, in Criminal Case No. 803 of 1911-12 on his file discharging opponent and to order opponent to be committed to Sessions.

2. Ordinarily an application of this kind should be presented under section 436 to the Sessions Judge or District Magistrate, and it is not the usual practice of this Court to take up cases in revision until parties have exhausted the opportunities given them by the Criminal Procedure Code to present their case before the subordinate Courts.

3. No exceptional circumstances have been urged in

in this case by the learned Public Prosecutor. He has called my attention to a letter of the Sessions Judge, Bangalore, in which he expresses the opinion that the Public Prosecutor should prefer his petition ~~to~~ in this Court.

4. I do not think this is sufficient to warrant my departing from precedent. I therefore reject this petition, and direct the Public Prosecutor, if so advised, to put in his petition either to the District Magistrate or Sessions Judge.

Sd/- E.H. Wallace,
JUDGE.

" C o p y "

R. Gopalaswamy

REGISTRAR.

N.G.

IN THE COURT OF THE CITY MAGISTRATE,

B A N G A L O R E.

Dated 18th March 1 9 1 3.

Present : - B. VENKOBA RAO, Esquire, B.A.,

Original Case No. 802 of 1911-12.

Complainant.	Vs.	Accused
Government.		Narayana Sas

The prosecution examined : -

(1) Mr. Nagappa. (2) V. Srinivasa Rao. (3) Sam pangiramiah. (4) Kuppaswamy Mudaliar. (5) Ramiah. (6). Ramaswamy Iyengar. (7) M. Mahadeva Rao. (8). Anantharamiah

and the following Exhibits were filed : -

Exhibit P_1 is the deposition of the accused before th Chief Court Sessions Case No. 1 of 19

- Do - P_2 is the chit.

- Do - P_3 is the whole file of orders and Exhibit P_{3A} is the leave application of Seshagiri Ra

- Do - P_4 is the pay-bill for July 1910 and Exhibit P is the baraward for the corresponding month for July 1910.

Exhibit

Exhibit P_5.is the pay-bill for August 1910 and Exhibit P_{5A} is the baraward for August 1910 and Exhibit P_{5B} is the signature of V. Srinivasa Rao in the baraward for August 1910.

- Do - P_6 is the pay-bill for October 1910 and Exhibit P_6 is the baraward for October 1910 and Exhibit P_{6B} is the signature of Srinivasa Rao in the baraward for October 1910.

- Do - P_7 is the pay-bill for November 1910.

- Do - P_{7A} is the baraward for that month and Exhibit P_{7B} is the signature of Srinivasa Rao in the baraward.

- Do - P_8 is the pay bill for September 1910

- Do - P_{8A} is the baraward for September 1910 and Exhibit P_{8B} is the signature of V. Srinivasa Rao in the baraward.

- Do - P_9 is the pay-bill for April 1911 and Exhibit P_{9A} is the baraward for that month.

- Do - P_{10} is the pay-bill for May 1911 and Exhibit P_{10A} is the baraward for that month and Exhibit P_{10B} is the signature of Rama in baraward for October 1910.

- Do - P_{11} is the pay-bill for January 1911 and Exhibit P_{11A} is the baraward for that month.

Exhibit

Exhibit P_{12} is the baraward for December 1910 and Exhibit P_{12A} is the pay-bill.

- Do - P_{13} is the signature in the C.Roster for having received the process on 5th May 1910.

- Do - P_{14} ....Do -.....17th December 1910.

- Do - P_{15} is the entry in the C.Roster showing the return of the process on 7th June 1910.

- Do - P_{16} is the baraward for the month of June 1910 and Exhibit P_{16B} is the signature.

- Do - P_{17} is the baraward for March 1910 and Exhibit P_{17B} is the signature of Rama.

- Do - P_{18} is the statement of the accused before the District Judge.

- Do - P_{19} is the erased mark but bearing the signature of Srikantiah in the baraward for February 1910.

- Do - P_{20} is the Circular about the attendance Register

- Do - P_{21} is the admitted signature of Srinivasa Rao in the baraward of April 1910.

- Do - P_{22} is the admitted signature of Srinivasa Rao in the baraward of May 1910.

Exhibit P_{23} and Exhibit P_{24} are the letters written by the accused.

- Do - P_{25} is the leave application of Narayana Sastri.

- Do - P_{26} is the baraward for March 1906.

- Do - P_{27} is the signature of Rama in the baraward for March 1910.

- Do - P_{28}..... .....Do.....for April 191

- Do - P_{29}.....Do.....May 1910

- Do - P_{30}.....Do.....June 1910

- Do - P_{31} is the signature of Rama in the baraward for July 1910.

- Do - P_{32} .....Do.....August 1910.

- Do - P_{33}..... .....Do.....September 1910

- Do - P_{34}.....Do.....April 1910.

- Do - P_{35} is the cash book.

- Do - P_{36} is the patti.

- Do - P_{37} is the ~~ixi~~ list of furniture etc:

- Do - P_{37A} .....Do.... and copy of Exhibit D_{11}.

Exhibit

Exhibit P_{38} is the entry in VII B Register.

- Do - P_{39} is the entry in the Register of Curator's.

- Do - P_{40} list of attached properties.

- Do - P_{41} is the warrant.

- Do - P_{42} ------Do--------

- Do - P_{43} is the application.

- Do - P_{44} is the report of the Nazir.

- Do - P_{45} is the entry in the ledger.

- Do - P_{46} is the entry in the continuation ledger.

The accused stated that he would file a written statement, that Mr. Nagappa asked him to get a loan of Rs. 3,000/-, that as he was not able to raise that money, ill-feeling arose between the two, that all the accounts were correct as they were prepared under the orders of his officer.

The written statement of the accused was as follows :

(1) That ever since his appointment as Sub Judge, Mr. Nagappa has been doing his best to put down the preponderance of Brahmins in the Public Service.

(2) That in pursuance of that policy he reported against his predecessor Mr. Jayarama Iyer and has been hating and trying to injure all those officials who seemed to him to be favourably disposed to Mr. Jayarama Iyer, by not carrying tales against him.

(3) That influenced by various other causes he managed to drop the complaints of Girmaji Rao, Narasimha Sastry and Chander Rao which he himself did not believe and could not substantiate and set up this Srinivasa Rao to give false evidence against the accused when he was called upon by the District Judge to submit his explanation with regard to certain allegations made against him.

(4) That Srinivasa Rao's service had been dispensed with from July to December 1910 is false.

(5) That the pay of Rs. 7 per month was duly dispersed to him during those months although owing to pressure of work his signature in the baraward was by an oversight omitted to be taken in August 1910.

(6) That Rama Rao who acted for Narasimha Sastry in April and May 1911 is not the same person as Korachar Ramiah

who

who has been examined for the prosecution in this case.

(7) That the sum of Rs. 2-5-4 being the pay due to the deceased Shama Rao was adjusted towards ~~f~~ an advance made to him for the purchase of Stationery articles, and

(8) That the sum of Rs. 2 part of the property attached in ~~Exhibit~~ caution No. 1149 of 1909-10 was duly handed over to the Process Nazir of the Additional Munsiff's Court, Bangalore.

The Accused was charged as follows : -

(1) That you between the 1st August 1910 and 3rd January 1911, at Bangalore City, being in any manner ~~xxx~~ entrusted wi with Rs. 35/- or dominion over Rs. 35/- in your capacity of a public servant Viz Central Nazir, the said Rs. 35/- being the pay drawn in the name of Srinivasa Rao for July, August, September, October and November 1910, committed criminal breach of trust in respect of that sum and thereby committed an offence punishable under Section 409 of the Indian Penal Code (Read with ~~Section~~ 222 (2), Criminal Procedure Code and within my cognizance".

(2) "That you between 1st May 1911 and 1st July 1911 at Bangalore City being in any manner entrusted with Rs. 14/

or dominion over Rs. 14/- in your capacity of a public servant viz Central Nazir the said Rs. 14/- being the pay drawn in the name of Narasimha Sastry for April 1911 and the pay drawn in the name of Rama for May 1911 committed Criminal Breach of Trust in respect of that sum and thereby committed an offence punishable under Section 409 of the Indian Penal Code (Read with ~~Section~~ 222 (2), Criminal Procedure Code) and within my cognizance".

(3) That you between the 28th of July 1910 and 4th July 1911 at Bangalore City being in any manner entrusted with Rs. 2/- or dominion over Rs. 2/- in your capacity of a public servant viz Central Nazir and Curator, the said Rs. 2/- being attached properties in O.S. No. 519 of 1906-0' and Exe~~ption~~cution No. 1149 of 1909-10 of the Sub Court, committed Criminal Breach of Trust in respect of that sum and thereby committed an offence punishable under Section 409 of the Indian Penal Code and within my cognizance".

The accused pleaded not guilty to the charge and stated that he would file his ~~is~~ list of witnesses through his counsel.

The defence examined:-

1. Mr. G. Satyaji Rao.
2. Kasi Ramaiya.
3. Appannayya.
4. Munisamiraju.
5. Nanjundayya.
6. M. Vasudeva Rao.
7. Kenchappa.
8. S. Varadarajalu.

and the following Exhibits were filed : -

Exhibit D_1 baraward for February 1910.

- Do -D_2 is the pay bill for February 1910.

- Do - D_3 is the To-Register.

- Do - D_4 order of appointment of Ramiah in Exhibit P_3.

- Do - D_5 baraward for December ~~1910~~ 1909.

- Do - D_6 .....Do.....January 1910.

- Do - D_7 is the service Register of Narasimha ~~Sastry~~ Sastry.

- Do - D_8 is the C. Roster of Narasimha Sastry.

- Do - D_9 baraward for ~~β~~ February 1911.

- Do - D_{10} entry in the Central Nazir's book dated 13-2-1906.

- Do - D_{11} is a list of articles handed over by the accused and Exhibit D_{11A} is the alleg forged signature and Exhibit D_{11B} is the initial.

Exhibit

Exhibit D_{12} is the A Register.

- Do - D_{13} and Exhibit D_{14} are the two Registers.

- Do - D_{15} is the order of the District Judge in Exhibit P_{18}.

- Do - D_{16} is the statement of Srinivasa Rao before Mr. Nagappa.

- Do - D_{17} is the Nominal Roll.

- Do - D_{18} is the Stamp Register.

- Do - D_{19} is the schedule of Establishment.

- Do - D_{20} is the baraward of the Sub Court.

- Do - D_{21} is the entry relating to Shama Rao in the baraward.

J U D G M E N T.

1. The case for the prosecution is as follows : -

The accused was the Central Nazir in Bangalore for many years under several officers. His last officer was Mr. B. Nagappa, Subordinate Judge, who took charge of the Central Nazarath in the latter part of 1909 and continued in charge of it until its abolition at the end of June 1911.

After the abolition of the Central Nazarath, the Comptroller wanted certain information connected with

the leave of certain official in the ~~xx~~ Central Nazarath days. Also certain officials of the Central Nazarath complained that they had not received their pay in the Central Nazarath days. Eventually the District Judge held an enquiry. The accused Narayana Sastry then said among other things that his officer Mr. Nagappa was in the habit of passing oral orders about appointments and that he (Mr. Nagappa) had so orally appointed certain persons. Th District Judge then sent the records to Mr. Nagappa for explanation. Mr. Nagappa then started a research into the past doings of Narayana Sastry. Ultimately the present prosecution was begun.

The accused has been tried on three counts. Th first is he drew pay for one V. Srinivasa Rao who never worked, pretended to have disbursed the pay to him by forging his signatures in the barawards and committed Criminal breach of trust with regard to the money involved i.e., Rs. 35/- for the five months beginning with July 191C The second count is - he drew pay for one Rama who never existed, pretended to have disbursed the pay to him by forging his signature in the barawards and committed criminal breach of trust with regard to the money involved I.E.,

Rs. 14/- for the months of April and May 1911.

The third count is - - he took possession of Rs.2/ attached cash in an execution case, as usual, entered the money in the Curator's Register as usual but scored out the entry and finally failed to hand over the amount to his successor on the abolition of the Central Nazarath, thereby committing criminal breach of trust with respect to the Rs.2/

The evidence is as follows : -

As regards the first count V. Srinivasa Rao says that he did not work, that the signatures are not his and tha he did not receive the pay. C.Rosters show that V.Srinivasa Rao did not serve processes in the period.

As regards the second count, one Korachar Ramiah say that he did not work, sign the baraward or receive the pay. Mr. Nagappa says that he appointed no other Rama. There is no written order to show the appointment of the Rama in question. The pay-bill for April 1911 does not mention Rama, while the baraward mentions it.

As regards the third count, Kuppuswamy Mudaliar and Mahadeva Rao who took charge from the accused, produce the

list

list prepared at the time of taking over ~~the~~ charge, and say that the Rs. 2/- was not paid by the accused. The Rs. 2/- had not been paid to the party concerned in the execution case.

II. The accused Narayana Sastry pleads not guilty.

~~III.~~ The defence witnesses say, as follows : -

(a) As regards the first count : - V.Srinivasa Ra was continuously on duty without break over a period of time including the months in question.

(b) As regards the second count : - The Rama in question existed, was working in Mr. Nagappa's house and was drawing his pay.

and (c) As regards the third count : - The Rs. 2/- were duly paid to Kuppuswamy Mudaliar by the accused.

The accused produces another charge-patti (Exhibit D // that was with him to show that the Rs. 2/- in question has been acknowledged under the initials of Kuppuswamy Mudaliar and Mahadeva Rao.

III. I have heard ~~the~~ arguments at length and fully considered

considered the case.

My views are as follows : -

There are discrepancies in V.Srinivasa Rao's evidence.

(1) He says that the signature in the November baraward is not his, while his statement that he signed the baraward in the latter part of Kartika and took his pay, means that his signature in the November baraward must be genuine.

(2) V. Srinivasa Rao says that he left Bangalore because the accused said that the vacancy in which V.Srinivasa Rao was working had ceased. We know that the vacancy had not ceased. V. Srinivasa Rao's evidence on the point must, therefore be untrue, or the accused must have mislead V. Srinivasa Rao for the purpose of getting a gratification. In the latter case it is improbable that V. Srinivasa Rao would have again been appointed by the accused without any gratification. But V. Srinivasa Rao does not speak of any gratification having been given. It has been suggested that the undisbursed pay of Srinivasa Rao might itself have been the gratification, but it would not have been gratification

gratification from V. Srinivasa Rao necessitating the doing of favour to Srinivasa Rao, unless Srinivasa Rao, was aware of the passing of the gratification. Srinivasa Rao does not speak of any such knowledge on his part.

These discrepancies show that the evidence of V.Srinivasa Rao must be untrue. But what could be his motive for giving false evidence against his benefactor the accused? On careful consideration, I believe that both fear and hope influenced V. Srinivasa Rao.

V. Srinivasa Rao appears to have now and then gone to his place near Yelahanka at week-ends and on occasions such as his father-in-law's death. These occasional absences have not been noted in the baraward, perhaps because the accused properly or improperly considered those periods as privilege or casual leave. V. Srinivasa Rao must have felt that if he spoke of doing continuous service, these absences at Yelahanka could be proved against him for more than their real value. There is no signature of V. Srinivasa Rao in the July baraward and if V. Srinivasa Rao spoke of receiving the pay in that month also he might not have been believed even if he were speaking the truth that by forgetfulness he omitted to affix his signature. On the other hand

it has often been noticed by eminent observers in India, if my memory serves me right, from at least the time of Maharaja Nundkumar, that when a man is in the bad books of persons in power, witnesses are ready to come forward to villify the man in trouble without any real inducement at all from the persons in power. So great is the desire to please men in power, although the latter may not desire such conduct at all. In the present case, V. Srinivasa Rao was remarkably cautious in feeling his way before he took a definite line. He bagan by saying before Mr. Nagappa that he "suspected" the signature vide page 10 of Srinivasa Rao's evidence before me. He afterwards became positive that the signatures were 'not' his. He must have known at the time he was giving his statement before Mr. Nagappa, that he was about to be given a permanent appointment as a process server.

The situation must have been in fact such for V. Srinivasa Rao that it would have been superhuman for him if he had preferred the line of truth to the line of least resistance, assuming that the truth was favourable to the accused. I mean no reflection on Mr. Nagappa or any other officer, and to use the words of Lord Macaulay in his essay on Warren ~~Hastin~~ Hastings, I consider them gentlemen of 'too much honor knowingly

knowingly to countenance false accusations.'

If there is still any weight in V. Srinivasa Rao's evidence after all that has been said, it is ~~xxxxxx~~ outbalanced by the defence evidence to the effect that V. Srinivasa Rao was continuously in service. The Public Prosecutor says that the defence evidence on the point is vague, but I think that people of the same official status would ha' noticed the absence of V. Srinivasa Rao for five months, if he had been really absent for such a long period. The celerity with which news of a'vacancy' temporary or otherwise spreads among co-ordinate officials is, to those who have observed it truely amazing.

V. Srinivasa Rao continuously kept his rented house in Bangalore and on the whole I believe that he did draw his pay continuously (I.E.,) every month, having been probably orderly for a lengthened period like Korachar Ramiah. The forgetfulness of the accused to take the signature of V. Srinivasa Rao in the July baraward may be the act of an innocent man or a criminal and does not by itself raise any presumption of guilt. V. Srinivasa Rao's evidence not being believe the omission of the signature in the July baraward amounts to

a mere failure to render accounts which is not itself a criminal breach of trust 9 A.D. 666.

I now turn to the second count. The signatures of Korachar Ramiah and Rama are so different that the accused could not have told Mr. Nagappa at any time that the two Ramas were identical. The accused appears to have maintained from the beginning of the controversy that there were two Ramas. The examination of Korachar Ramiah by the prosecution appears to have been a superfluity. That another Rama existed, did work and drew pay is proved by the defence witnesses. It has not been proved that appointments were always being made by means of written orders. Mr. Nagappa himself admits that one Hanumantha and one Muniswamy were as a matter of fact, appointed, although no written orders are forthcoming. Vide P.P. 43 and 46 of Mr. Nagappa's evidence. The evidence of Mr. Nagappa that Rama was not appointed is in my opinion not a matter of memory at all but a judgment based on a process of reasoning. That Mr. Nagappa had not clearly analised the nature of the mental processes in his mind is perfectly obvious. On page 14 of his evidence

before

before me he says "I relied on the accused and signed the pay-bills and ~~p~~ barawards. Some insertions were made after I signed the pay-bill and baraward. " If Mr. Nagappa used to rely on the accused so entirely, would it have been difficult for the accused to make insertions before Mr. Nagappa's signature? Why should he make subsequent insertions? In the passage cited, Mr. Nagappa - practically asserts that he was both checking and blindly signing the pay-bills and barawards. And the point of this statement of Mr. Nagappa's is that it occurs in the chief examination. On page 20 which is still examination-in-chief, Mr. Nagappa speaks of subsequent insertions and on page 24, he speaks of the fear of the accused for his checking. On page 57, he speaks of signing pay-bills and barawards without checking them. Two rival theories thus evidently held possession of Mr. Nagappa's mind — one that he checked and the other that he did not check, the pay-bills and barawards. While I fully sympathise with the position of an officer who ~~is~~ has often to depend on the loyalty of his subordinate, I think that some sympathy is due also to the official who may imagine that the signature of his officer is some protection and finds that it is not. If

Mr. Nagappa checked, his signature is a protection. If he did not check, his ignorance or forgetfulness of what really happened is also a protection. But the combination of checking and not checking must really be a hard thing for the subordinate to contend with.

I must refer to other points also. On page 47, Mr. Nagappa says 'I did not appoint R. Seshaiya. I am positive about it, because after January 1911, I have invariably reported acting appointments to the Chief Court.' On Page 90 Mr. Nagappa says 'I don't remember granting leave to Narasimha Sastry in April 1911. There is no order granting leave to Narasimha Sastry in April and May 1911, or appointing a substitute." On page. 91, Mr. Nagappa says that 'for the following reasons he has reason to believe' that Narasimha Sastry was not on leave in April and May 1911. It is remarkable that in every one of the passages quoted above Mr. Nagappa supports by reason a statement apparently made from memory. The reason is not a fact remembered by the principle of association of ideas but is the state of a record i.e., file of orders subsequently examined.

In my judgment, Mr. Nagappa has not carefully observed

observed the distinction between memory proper, and a conclusion arrived at by a process of reasoning.

Mr. Nagappa's reasoning is as follows:-

(1). I invariably passed written orders.

(2). There is no written order in this case.

(3). Therefore I did not appoint the man or give leave to him.

As I said before, Mr. Nagappa himself has had to admit that Hanumantha and Munisamy were really appointed but that no written orders are forthcoming. I consider it therefore a most dangerous proposition to hold that because no written order @ is forth coming, a man was never appointed. Assuming that Mr. Nagappa is right in saying that he invariably passed written orders, the written orders may have been mislaid. These written orders were at one time considered so unimportant that they were handed over by the accused to his successor without a ferist.

If in the light of these remarks, pages 17 and 18 of Mr. Nagappa's evidence be read, it will be seen that he came to the conclusion that Rama was not appointed, after examining the accused, calling for the orders of appointment and examining Koracher Ramayya. I am convinced that Mr. Nagappa's statement that Rama was not appointed must be looked upon not as a matter of

memory

memory but as a conclusion arrived at by a process of reasoning. Without the slightest reflection on Mr. Nagappa's personal honor I am able therefore to believe the defence evidence that a Rama other than Koracher Ramayya did work and draw his pay.

In this connection, the following dicta deserve to be kept in view. They are from Amiralli and Woodroffe's Law of Evidence Vth Edition, General Introduction p.4.

When one witness deposes to a certain fact having occurred, and another witness, stating that he was present at the same time, denies that any such fact took place, greater weight, other things being equal, is to be attached to the witness alleging the affirmative. "Upon general principles, affirmative is better than negative evidence. A person deposing to a fact, which he states he saw, must either speak truly or must have invented his story, or it must be sheer delusion. Not so, with respect to negative; a fact may have taken place in the very sight of a person who may not have observed it, and if he did observe, he may have forgotten it."

Mr. Nagappa's extensive researches into the doings of the accused after the latter said that Mr. Nagappa was passing oral orders, have been attributed to just moral indignation on the one hand and to feelings of revenge on the accused on the other. Moral indignation against one who had long been long a trusted

trusted subordinate might have been satisfied by getting the subordinate in question convicted on a few points let us say, these at first raised and feelings of revenge are incompatible with the character of a gentleman like Mr. Nagappa. My view that Mr. Nagappa was mistaking his reasoned conclusions, for memory finds a way out of the dilemma.

For, my view at once shows the probability that Mr. Nagappa may have ~~had~~ made extensive researches for the purpose probably unconscious of strengthening his memory, i, e, his reasoned conclusions by means of similar transactions. No arguments were addressed to me on either side as regards similar transactions, but assuming that they are admissible, they can have little weight when there is definite evidence that Rama really worked and drew his pay in this particular case.

To sum up this part of the case then, I do not think I can find the accused guilty on the second count.

I now proceed to the third count.

In June 1912 i, e, about a year after taking charge, Kuppusami Mudaliar discovered that the 2 Rupees had not been paid to him by the accused. Vide page 8 of Kuppusami Mudaliar's statement. In a remarkably short time after this, i. e., in July 1912 the party applied for a refund of the 2 Rupees. The accused was

taken

taken to be guilty and no departmental explanation was taken from him. The earliest chance of discovering Exhibit D_{11} did not therefore occur. When Exhibit D_{11} was produced to Kuppusami Mudaliar in cross-examination, he at first admitted his initials near the 2 Rupees, then faltered and then denied his initials. On page 10 of his evidence, Kuppusami Mudaliar says that he did not compare either of the charge pattis Exhibit P_{37A} or Exhibit D_{11} with the Curator's Register. On page 9 of his cross-examination after charge, however he says that he referred to the Curator's register as a matter of course. Kuppusami Mudaliar goes on to say in the latter passage "I never referred to VII B. There was no necessity to refer to VII B, as it contains even articles left with surety". There is a subtle fallacy implied in this passage. Because Kuppusami Mudaliar did not see VII B, it does not follow that the accused did not see it. The accused's method of keeping the Curator's Register appears to honestly differ from Kuppusami Mudaliar's method, in that the former mentions the attached cash in VII B only. So assuming that Kuppusami Mudaliar may have looked at the Curator's Register only the accused may have looked at the VII B Register also. To assume that because Kuppusami Mudaliar who did not know accused's method did not look at the VII B Register, the accused also did not look at it, is to make the mistake of Svetaketu of the Chandogya

Candogya Upanishad who assumed that because he did not learn a thing, his teachers also must have been ignorant of it. That there was an honest difference in the method of maintaining the Registers, between Kuppusami Mudaliar and the accused, is clear from the evidence of Kuppusami Mudaliar himself. On page 13 of his evidence after charge, Kuppusami Mudaliar ~~himself~~ says with regard to 1-15-6 that has not been misappropriated by the accused that it has not been entered in the Curator's Register as it "ought to have been".

What appears to me probable is that while the accused looked at VII B also and gave the 2½ Kuppusami Mudaliar imagined that everything would be in the Registers and that they would always explain themselves, and paid attention particularly only to the list submitted by the accused. That the accused did not depend on the Curator's Register alone in having Exhibit D11 prepared, is obvious, for the 1-15-6 which undoubtedly was handed over is not taken from the Curator's Register at all.

The probability of my view will appear in a clearer light when it is considered what the view contrary to mine implies. It implies that the accused after he came to know of his mistake in the 2½ affair, committed forgery on Exhibit D_{11} the charge-patti with him, while he was in custody for this trial. It is difficult to conclude that the accused had opportunities for ~~doc~~

committing

committing forgery while he was in custody.

It is all important that the 2 cases against the accused should be considered independently, without reference to any vague prejudices against the accused on account of the multifarious charges against him. If the accused had not been undergoing a trial, and if the two chargepatties had been placed before any authority for deciding whether Kuppusami Mudaliar or Narayana Sastri should be proceeded against, it would have been hard for that authority to give a decided opinion. Kuppusami Mudaliar is as likely to forget things as any one else, and as I have already pointed out, Kuppusami Mudaliar's memory as to what really happened at the time of transfer of charge is vague. He says first that he did not compare either of the chargepatties with the Curator's Register, and then he declares later on that the Curator's Register was referred to"as a matter of course". The use of the words 'as a matter of course' is in my opinion a plain confession that he has no distinct recollection of what occurred. Then how can Kuppusami Mudaliar be certain that the 2 were not given to him? It comes to this:- Kuppusami Mudaliar before he saw Exhibit D_{11} declared that he had not received the 2 . This declaration must have been based not on memory but on the charge patty with him. After Kuppusami Mudaliar saw the other chargepatty, even if he was convinced of a ristake on

his

his part, he could not avow it, without subjecting himself to ridicule and what is worse the risk of a Criminal prosecution. Evidence given under such temptations to state the untruth, cannot be acted upon without the gravest danger.

When two chargepatties differ, it does not at once follow that one of them is a forgery.

The difference may be due to honest mistake. The efficiency of a check depends on the shrewdness with which possible sources of mistake are foreseen, and the strength of memory on a particular point depends on the attention and trouble bestowed on the point while it is taking place. Kuppusami Mudaliar impressed me as an efficient man and his check in 1911 at the time of transfer of charge must have been efficient. He says that the accused asked him to take charge on the evening of the day on which the chargepatties were ready, but that he Kuppusami Mudaliar did not like to take charge in a hurry, and actually took charge on the third day, although the chargepatties were antedated to avoid having to give explanation for delay. Now it seems to me that a careful man like that who would not be hurried, is very likely to have seen the VII B Register also, in order to get at a description of the documents numbered but not described in the Curatór's Register. This is however a side point. I have already indicated how even if Kuppusami Mudaliar did not see the VII B

Register

Register, the accused is likely to have seen it. Coming back to my main line of argument, what I wish to note is that an efficient man is often a man of weak memory even as regards the points that he did check in detail, because the efficiency of an efficient man is without effort, and what is done without effort is not long remembered. Efficient check at the time by Kuppusami Mudaliar is thus quite compatible with his weak memory that I have already commented upon. If there had been an efficient check, what was discovered in ~~July~~ June even before the party came, and the payment 1912, could have been discovered in July 1911 and the payments of 2 Rs/- in Exhibit D_{11} may be a fact. I will go further and add that Kuppusami Mudaliar may have checked things carefully and yet may have been careless in the matter of comparing the two chargepatties. Some people think that so long as what they sign is correct, they need not fear anything. Other people think that it does not matter how negligent they ordinarily are, provided they act with caution in the matters that otherwise would land them in disaster. Now Kuppusami Mudaliar apperas to belong to the first category, while Narayana Sastri belongs to the second. At all events, that is one probable explanation of the difference in the chargepatties. Kuppusami Mudaliar would have thought that what he signed was correct that it was the look out of other people to see that what they signed was correct that other people were like himself and that his principle was sufficient to prevent mistakes. It is in fact something like

Freetraders

Freetraders thinking that every country would adopt free trade and that Free Trade was altogether an unassailable thing. Unfortunately some countries adopt Protection, and therein arises the difficulty. In this case the careless way in which Narayana Sastri has kept his paybills and barawards indicates that he belongs to the second category that I mentioned to which Kuppusami Mudaliar does not belong, and it is very natural for Narayana Sastri to get the signature of the other party in Exhibit D_{11} as his protection, and leave the comparision of the two patties, unperformed as he left the comparision of the paybills and barawards unperformed. If this is really what happened, and it may well have happened, there is a humorous side to this very serious affair. What I said of Kuppusami Mudaliar applies mutatis mutandis to Mahadeva Rao.

It will be obvious from what I have said that it is impossible to convict the accused on the third count.

This exhausts all the counts on which the accused has been really tried.

As regards the offences triable by this Court of Session, I separated them from this trial, not because at that time I found the charges groundless, but because they could not be considered in the present trial without violating the provisions about joinder of charges. In fact while I went on with 409 I.P.

C.

6. I could hardly declare that 477 A, I.P.C. was groundless. One is evidence of the other. I never considered that 24 Madras 136 had any application to this case, because in effect I declined to proceed with the Sessions offences, not primarily on reasons based on evidence but for reasons relating to the joinder of charges. Because misjoinder is not fatal in a preliminary enquiry, it does not follow so far as I can see that the Magistrate can be compelled by parties to arrange on the same preliminary enquiry for a number of trials whether all the trials are to be before one tribunal or whether some of them have to be before the Magistrate and some before the Court of Session. Such an absolute right in the party will be incompatible with the discretion of the Court. I did not wish to yield to this form of compulsion, but at the same time, I wished to keep my discretion wholly unfettered, should I at any future time, have thought that the case ought to be committed to the Court of Session. I now think that there are no sufficient grounds to commit the case to the Court of Session. But the final judgment in 24 Madras 136 shows that the stage for passing orders under section 209 Cr. Pro. Code is past. In my view the legal position is this:- I did not on the merits discharge the accused of the Sessions offences. I only kept aside the Sessions offences for misjoinder. Therefore what I did did not amount to a discharge as contemplated in 24 Madras 136. The Sessions offences could have been

been brought forward in a separate complaint, which the Public Prosecutor did not do. The Sessions offences having been kept asidebefore charges were framed, no orders are now required @ about those offences, unless I am prepared to commit them to the Court of Session. As I said short by before in this judgment, I do not now see any sufficient grounds for commitment, having had all the evidence before me.

In conclusion I find the accused not guilty of the offences punishable under section 409 I.P.C. and acquit him under section 258 Criminal Procedure Code.

In open court.
Sd/ B. Venkoba Rao.
City Magistrate
Bangalore.

'C O P Y'

REGISTRAR.

H.C.C.

1 & 3

G. R. S. 26]

File No. 287-12

Serial No. 15

Diary No. of letter replied to

No. g 3652

General and Revenue Secretariat

( )

, the *191* .

To

The Registrar,

Chief Court

Date of issue 9th March, 1916

Signed by M.r C. Sreenivasa Iyer

Sir,

Adverting to correspondence ending with your letter no 2835/216 of 10/15th Dec.r 1916 forwarding the finish reporting on the case of Ranganna Sastry, late Circuit Nazir of Bangalore I am directed to request that the service register of the official may be forwarded to this office duly posted up to date.

I have &c

for Secy to Govt

Gen.l & Rev.l Sec.t

over.

SUBJECT.

Reg. file
8/3/16

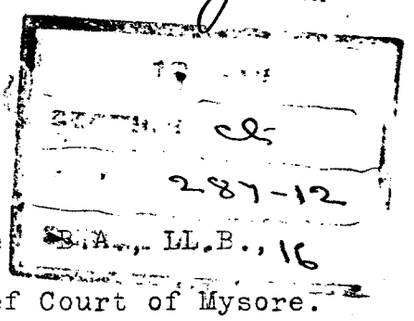
Urgent

No. 4425 with a Service Register
332

III
17/3

CHIEF COURT OF MYSORE,
BANGALORE.
Dated 16th March 1916.

DIARY No. J 2517



ccs
17/3

From

N. T. GOPALIENGAR, Esquire, B.A., LL.B.,
Registrar of the Chief Court of Mysore.

To

D. M. NARASINGA RAO, Esquire, B.A., B.L.,
Secretary to the Government of Mysore,
General Department.

S i r,

Adverting to your letter No. J.3652/Cts.287-12-15 dated the 9th Instant, I am directed to forward herewith the service register of G. Narayana Sastry, duly posted up to date.

I have the honour to be,
Sir,
Your most obedient servant,

N. Gopaliengar

REGISTRAR.

N.G.

G.R.S. 28]

Re late Central Nazir Narayana Sastry's case

Ct. **File No.** 287 -12

Serial No. 17

Diary No. of letter replied to 2517

Proceedings of the Government of His Highness the Maharaja of Mysore

GENERAL AND REVENUE SECRETARIAT.

( )

, *the* 191 .

READ—

Letter no 2855/216 dy 10/15th Dec 1915 from the Registrar, Chief Court forwarding the report of the audit of the accounts of the late Central

Date of issue 12th May 1916.

Signed by Mr. G. Srinivasa Iyengar

ORDER THEREON. No.

Nazareth for the period from 2 Feb 1894 to 30 June 1898 mentioning in detail the irregularities committed by G. Narayana Sastri, late Central Nazir, and stating,

over.

SUBJECT.

GPB—50,000—1-12-12

(a) that, as the irregularities brought to light relate to the years 1898 and 1899 and the records of some of the cases have been destroyed, and there is always a possibility of there being some mistake in a particular case, although the evidence of misappropriation is substantial and that therefore the Judges do not think it desirable to call upon the Nazir to make good any sum of money,

(b) that the Nazir has, in the opinion of the Judges, failed to meet the greater part of the case made against him by the Auditor and that he failed grossly in his duty of keeping accounts properly,

(c) that the Judges do not think that anything will be gained by pursuing the audit down to the abolition of the Nazareth system as it will take a long time and as in the absence of records and registers no satisfactory conclusions can be drawn, and

(d) that if Govt. agree with this view

G. R. S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

view the Chief Court will point Narayana Sastry as a clerk on the pay he was drawing before suspension and without any ~~pay~~ allowance for the period ~~of suspension~~ as he did not clear his reputation.

Order thereon No. J 4444 dt 12.5.19

In the circumstances mentioned Govt are pleased to accept the proposal of the Chief Court.

Es 9.5.
for Secy

To

The Registrar Chief Ct returning enclosures and service register of Narayana Sastry.

The Comptroller to Govt

X Encls 2 files and book and a service register sent. R 12/5

815/16

GPB—20,000—7-7-14